

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 15-CR-00381 (RJD)
:
:
-against- :
: United States Courthouse
: Brooklyn, New York
:
VITALY KORCHEVSKY and :
VLADISLAV KHALUPSKY, :
: Tuesday, July 3, 2018
Defendants. : 8:40 a.m.
- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE RAYMOND J. DEARIE AND JURY
UNITED STATES SENIOR DISTRICT JUDGE

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AND

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A P P E A R A N C E S: (Continued)

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transcript produced by Computer-Assisted Transcription.

P R O C E E D I N G S

--oo0oo--

(In open court; outside the presence of the jury.)

THE COURT: Good morning, everyone. Have a seat.

Okay. I owe you some rulings. If my count is
correct, I believe three, in particular. I'm not going to
charge on multiple conspiracies. I am going to charge
on conscience avoidance. I re-read *Ferguson* again. I have
known that case for a lot of reasons. Of course, *Ferguson*
did approve of the conscious avoidance charge, and I am
quite confident it is not only appropriate here. The

1 Government is not required to choose the theory of the case,
2 and I'm sure the emphasis of their concluding remarks will
3 be directed at the issue of knowledge in the old-fashioned
4 way, that I have -- or given what I understand to be the
5 inappropriate instruction.

6 The only one remaining issue is this question of
7 the introduction, which I thought a lot about because,
8 frankly, I have not had this come up in the past. I have
9 had in many cases involved introductions, but none quite
10 like this, I think we can all probably agree. I am going to
11 keep it out. You know, whether it is in the nature of
12 surplusage, it certainly goes well beyond providing context
13 and background for this jury. Much of it has been the
14 subject of considerable testimony. There are modest
15 portions of it that do not strike a familiar chord in my
16 recollection, as we discussed yesterday. But more
17 fundamentally, whether it's surplusage or not, and in some
18 respects, it certainly is. The question to me is more
19 fundamental. The intro as cast is adversarial and
20 argumentative, which is not surprising. It is, after all,
21 part of the indictment.

22 I am not particularly confident that my repeated
23 admonitions to the jury that this material -- and I would
24 often repeat them were I to read the introduction, that the
25 material is mere accusation. It's really a mere question of

1 fairness. It's tantamount to exaggeration, but I think it
2 has some relevance to it. It is tantamount to sending the
3 Assistant United States District Attorney into the jury room
4 with the jury. That is an exaggeration. But I just think
5 it's so detailed and so argumentative and so unnecessary,
6 that a more prudent and fair course of action is to just
7 take it out of the case, and that is what I have decided to
8 do.

9 I don't back off my initial ruling, by the way,
10 about the *in limine*, the *in limine* motion to strike certain
11 terms. Those terms have been used repeatedly by all
12 witnesses -- by many witnesses throughout the course of the
13 trial; and indeed, they have become part of our common
14 21st Century vocabulary. Those terms do not bother me at
15 all. But overall, that document left in the hands of the
16 jury to read, because we all agreed I would not read it
17 here, potentially has an impact that goes beyond any
18 legitimate use of an introduction, a legitimate use or need
19 for an introduction.

20 Yes, sir?

21 MR. TUCKER: Your Honor, just for my
22 clarification. Obviously, we haven't seen the defense
23 theory of the case yet. Of course, they weren't required to
24 provide one before they presented to the jury. Is the Court
25 so inclined to leave that in? Because one might argue that

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1 that's tantamount in sending a defense lawyer back into the
2 jury room with the jury?

3 THE COURT: Well, it's a lengthy charge. I think
4 right now, and I am still tinkering with it, it is about 60
5 pages long. A lot of it is -- if you go to borrow my rather
6 weak analogous, a lot might say it is sending the
7 prosecutor back with the jury. They are entitled, as a
8 matter of right under the Second Circuit law, to have the
9 jury instructed on the theory of their defense. Now, what
10 that instruction is going to sound like is yet to be
11 determined because I have not gotten anything from them.
12 But we will see. But I understand your concern, and I think
13 in fairness, there is a balance here. The proper balance is
14 struck in favor of keeping the introduction out.

15 All right. We have 15 minutes, so I suggest
16 you -- yes, sir? You are going to fight me on Mr. Arkadiy
17 Dubovoy's comment?

18 MR. GOPSTEIN: No, definitely not, Your Honor.

19 I think that all the other issues that we
20 discussed yesterday can appropriately be addressed after
21 summations. I just wanted to raise one small one to the
22 extent it comes up and it is with regard to venue again. I
23 just think there's a missing part of the charge with regard
24 to substantive securities fraud, and that is namely in the
25 current charge, which is on Page 52 of yesterday's draft, at

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1 the top it stated that venue is proper if you find that the
2 defendant intentionally and knowingly caused a transaction
3 constituting securities fraud to occur in the
4 Eastern District of New York. I know Your Honor removed the
5 "at least in part," which was from, I think, the Shkreli
6 trial, and I think the basis of that is if you make a phone
7 call, for example, that can be venue. But the part that's
8 missing is the second option, which is, if it is foreseeable
9 that such an act or transaction would occur in the
10 Eastern District of New York --

11 THE COURT: I think we put that language in.

12 MR. GOPSTEIN: It's been added?

13 THE COURT: Yes.

14 MR. GOPSTEIN: Okay. I just wanted to -- thank
15 you.

16 THE COURT: I will get -- again, it is not
17 terribly substantive as to language, but I will get this new
18 version to you as quickly as I possibly can sometime later
19 today.

20 MR. GOPSTEIN: Thank you, Your Honor.

21 THE COURT: Okay, then, take a breathe and we will
22 start promptly at 9 o'clock.

23 MR. TUCKER: Thank you, Your Honor.

24 THE COURT: I'm sorry? Did somebody have
25 something else?

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1 MR. TUCKER: We said thank you, Your Honor.

2 THE COURT: Yes, sir.

3 (Pause in proceedings.)

4 THE COURT: Okay. We are ready to go.

5 Generally, I like to take a break somewhere in the
6 90-minutes, no more than two hours.

7 MS. NESTOR: Sure, Your Honor.

8 THE COURT: You can make that call yourself, so
9 you can find a logical point.

10 MS. NESTOR: Sounds good.

11 THE COURT: Or if necessary if the judge is
12 sitting here in agony, he will make it for you.

13 MS. NESTOR: That's fine, Your Honor. If I do
14 forget, please do make it for me.

15 THE COURT: Rest assured.

16 Do you want these lights dimmed?

17 MS. NESTOR: I do not.

18 THE COURT: Okay.

19 MS. NESTOR: For fear of falling asleep.

20 I will have the jurors take out their screens
21 Your Honor.

22 THE COURT: That's fine and try to remember or
23 reporter.

24 MS. NESTOR: I will, Your Honor. And I'm sure if
25 I go too fast, everyone will let me know.

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1 THE COURT: Well, we will.

2 MS. NESTOR: And that's okay.

3 (Pause in proceedings.)

4 THE COURTROOM DEPUTY: All rise.

5 (Jury enters the courtroom.)

6 (Jury present.)

7 THE COURT: Good morning everyone, and please be
8 seated.

9 THE JURY: Good morning.

10 THE COURT: We start out on a very positive note
11 when I see a Mets Jersey walk into the courtroom. Then I
12 see the name on the back of it, and I don't know what to
13 make of that.

14 We are about to begin our next phrase, the
15 concluding arguments or summations of counsel, as I have
16 told you. Now, what I have told you also in the past is
17 what you are about to hear is not evidence. Right? You
18 heard the evidence from this witness chair. You see the
19 evidence in terms of the dockets and exhibits that have come
20 into evidence. But what you are going to hear is not
21 evidence, please bear that in mind. It is argument. That
22 will be obvious to you.

23 You should also understand that the attorneys will
24 do their best to recall accurately the testimony that we
25 have heard. All right? That is their obligation to the

1 Court. But more fundamentally, that is their obligation to
2 you, but we are all human and our recollections can differ,
3 particularly after you have heard a lot of information in a
4 short period of time. So if your recollection differs from
5 that expressed by an attorney in making his or her
6 concluding remarks to you, bear in mind, it is your
7 recollection that will govern during the course of your
8 deliberations. And of course, we have ways of refreshing
9 you recollection for the use of the transcript of the
10 proceedings should it become necessary during your
11 deliberations. By telling you this, I do not mean to
12 suggest that anybody is going to try to pull the wool over
13 your eyes or fool you or misstate the evidence. But we are
14 all human. All right?

15 Ordinarily, I do not allow the lawyers to make
16 reference to the legal instructions that I am going to give
17 you later this week. That is my department. I do, however,
18 permit the lawyers to make passing reference to some of the
19 more fundamental concepts that we employ, some of which you
20 have heard about, in an effort to facilitate their
21 arguments. So if you hear anything that sounds like law,
22 bear in mind that by your oath, you have agreed to follow
23 the law as I state it, bear in mind.

24 Okay. One other little thought that just ran
25 through my mind, and I probably have forgotten it. All

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1 right. I think that is probably it. I will remember it as
2 soon as I sit down.

3 This is not a test of strength. We need your
4 assistance. This is an important part of the trial. I do
5 not mean to understate it. These summations will help you
6 focus your attention, perhaps assist you in considering the
7 evidence, all right? But bear in mind, they are not
8 evidence.

9 Also now that we are no longer in the evidentiary
10 phase of the case, the evidence is closed, I do not
11 ordinarily take objections, so you are not going to hear
12 attorneys bouncing up with objections. Not that they
13 bounced up very much during the course of the trial,
14 fortunately. But needless to say, and I only say this
15 because of a question that I once got from a juror after the
16 case was over: The fact that the attorneys do not object
17 does not mean that they agree with what is being said.
18 Okay? That will be readily apparent to you once we get
19 under way. All right?

20 And with that, I invite your very close attention.

21 Ms. Nestor?

22 MS. NESTOR: Your Honor, may I ask the jurors to
23 take out their screens as they follow along?

24 THE COURT: Yes.

25 MS. NESTOR: Thank you.

Summations of Ms. Nestor

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1 Good morning, everyone.

2 THE JURY: Good morning.

3 MS. NESTOR: Mr. Gopstein stood up here at the
4 beginning this trial a few weeks ago and he told you you
5 were going to learn about an international network of
6 computer hackers and corrupt stock traders. He told you
7 this network consisted of hackers who stole valuable
8 information and a couple of stock traders -- corrupt stock
9 traders who used this stolen information to cheat the public
10 by trading on that information and made million of dollars
11 doing it.

12 You have now come to the end of the trial and you
13 know exactly who the corrupt stock traders are. They have
14 been sitting in front of you this entire time. We have
15 proven to you beyond a reasonable doubt that they are the
16 Defendants Vitaly Korchevsky and Vladislav Khalupsky.

17 Now, I want to take a moment to step back. Is
18 there a lot of sophisticated methods that were used in this
19 tasks of the newswire and to trade on the stolen
20 information, but in the end, this case has actually been
21 quite straightforward. It happened in the Ukraine, stole
22 thousands to press releases issued by hundreds of companies
23 before they went public. The defendants and those they were
24 working with, including Arkadiy and Igor Dubovoy, paid for
25 those press releases so the defendants could trade on them

1 ahead of the market and make lots of money. The defendants
2 stole and they cheated. It is that simple.

3 Each witness presented you with a piece of the
4 puzzle during this trial. My job is to put it altogether
5 for you. I'm going to highlight a few pieces of evidence.
6 I'm not going to highlight every piece, but we will go
7 through a good chunk of the evidence. I'm going to use a
8 PowerPoint with you today. Now, the PowerPoint is not
9 evidence, as the judge instructed you, but it will refer to
10 evidence and exhibit numbers in it. If you want to take
11 notes, you can take notes, but you are not going to have
12 that PowerPoint back in the deliberation room with you.

13 Both Defendants are charged with co-conspiracy
14 here, but really, it was just one single criminal conspiracy
15 in operation with a bunch of different goals. The single
16 more important goal was to make money. Now, these
17 defendants, they didn't do it all on their own. That's the
18 whole point of what a conspiracy is, everyone has a job to
19 do. You know after sitting through this trial that there
20 are different players for criminal conspiracy. First there
21 were the hackers. You learned about them. They were from
22 the Ukraine. They stole press releases from three newswires
23 before they went public. The press releases have limited
24 value without someone to trade on them and money to trade
25 with. So the hackers, they needed money men. They found

Summations of Ms. Nestor

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1 Arkadiy Dubovoy and Pavel Dubovoy, Arkadiy's brother. But
2 Arkadiy and Igor didn't know what to do with the
3 information. They needed traders that knew how to trade
4 based on stolen press releases. That's where the defendants
5 came in.

6 For their conduct both Defendants are charged with
7 five crimes. They're listed in this slide. I'm going to
8 get into the charges at the end of my summation. As the
9 judge said his charge controls, but I am going to walk
10 through the evidence with you and show you how to affix it
11 to law. But as to 4 what you need to understand is that
12 wire fraud and securities fraud charges require
13 the Government to prove that there was a scheme to deceive,
14 and that the defendants knew and intended to participate in
15 this criminal scheme. The scheme to deceive here were the
16 hackers used the stolen passwords to trick the newswire's
17 computers to let the hackers inside. Once they had access,
18 the hackers took thousands of press releases before those
19 press leases were distributed to the general public. Put
20 simply, the hackers deceptively pretended to be the
21 newswire's companies' employees and customers so they could
22 get past the computer security and take valuable, nonpublic
23 information to pre-distributed press releases.

24 Now, some of the reasons you know the defendants
25 intended to participate in a criminal scheme is through

Summations of Ms. Nestor

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1 communications that you saw between the defendants and their
2 co-conspirators during this trial, including text messages
3 and e-mails, the trading activity that you saw, the profit
4 that each Defendant made from the scheme, Khalupsky's
5 statement that he knew the hackers, all of the electronic
6 evidence from Korchevsky -- that was received from
7 Korchevsky, and the photos of the Oracle press release that
8 were found on these emails. You also heard the Oracle
9 pre-distribution press releases. You also heard from the
10 cooperators in this case, and they told you what happened.
11 But we don't ask you to rely on their recollection or their
12 credibility alone. You ask you to value their testimony in
13 light of all the evidence received during this trial.

14 You know this scheme began when Pavel came to
15 Arkadiy Dubovoy -- Pavel Dubovoy came to Igor and Arkadiy
16 Dubovoy and told them that he had a way for them to trade on
17 the stock market. Arkadiy asked his business partner,
18 Garkusha, to take a look at the information that Pavel
19 provided, and Garkusha received instruction to access the
20 server that housed the information. While Garkusha
21 understood that the server houses press releases, he didn't
22 really have the skill that he needed to use the
23 press releases to make a profit, so Arkadiy went to someone
24 who could, the Defendant Vitaly Korchevsky.

25 In 2010 Korchevsky, Arkadiy Dubovoy, and Garkusha

Summations of Ms. Nestor

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1 met twice to discuss the stolen press releases. The first
2 meeting was at the airport at Atlanta, Georgia. Arkadiy and
3 Garkusha described the scheme to Korchevsky generally and
4 showed him some of the press release that Garkusha printed
5 out from the server. Korchevsky initially said this is old
6 and it was worthless. Arkadiy explained to Korchevsky that
7 this information could be obtained before the rest of the
8 market got it.

9 The second meeting to discuss this scheme was at
10 APD, Arkadiy and Garkusha's construction company. Either at
11 this meeting or shortly thereafter, Korchevsky got codes to
12 access the press releases on a server. And a little later
13 told Arkadiy that the codes worked and could be used to
14 actually trade. That's when Arkadiy Dubovoy opened a
15 brokerage account for Korchevsky to trade. That's how it
16 all started with Korchevsky.

17 Now, Vladislav Khalupsky joined shortly
18 thereafter. Pavel Dubovoy introduced Arkadiy Dubovoy to
19 Khalupsky in 2011. Arkadiy wanted to have another trader
20 other than on Korchevsky trading on this stolen information.
21 Arkadiy and Pavel met with Khalupsky at Dolphin Trading,
22 Khalupsky's trading business in Odessa, Ukraine. Similar to
23 Korchevsky, Arkadiy and Pavel told Khalupsky they had a
24 program that they could get stolen press releases before
25 they became public. Khalupsky agreed to trade in Arkadiy's

1 brokerage account on the stolen press releases. Pavel
2 provided Khalupsky with a code to access the servers. So
3 both Korchevsky and Khalupsky started trading. The Dubovoy
4 provided them with a number of brokerage accounts to trade
5 in, and each received a percentage of the profits for their
6 role.

7 Igor Dubovoy, Arkadiy Dubovoy's son, would help
8 his father by checking the brokerage account and making sure
9 Khalupsky and Korchevsky were trading and seeing what they
10 were doing. He would also wire money on his father's
11 behalf, including to pay Korchevsky and to pay Khalupsky and
12 to pay the hacker. Igor also purchase electronics for
13 Korchevsky at Korchevsky's request and Mr. Korchevsky used
14 them to trade.

15 You learned that at times, the passwords to the
16 server would change and both Korchevsky and Khalupsky would
17 get new passwords. Pavel would provide Igor passwords to
18 send along to Korchevsky. And you learned that the hackers
19 are also being paid a percentage of the profits by
20 Arkadiy Dubovoy. Instead of paying the hackers directly,
21 Arkadiy and Igor would wire the money to Pavel in the
22 Ukraine to pay the hackers. You learned that Pavel
23 Dubovoy -- that a man named Roma in the Ukraine, was in
24 charge of the hackers. Roma served as an intermediary
25 between the hackers and the Dubovoy.

1 You learned that Korchevsky wasn't just trading
2 for the Dubovoys. He was also trading for himself in his
3 own brokerage account. He didn't really tell the Dubovoys
4 that he was doing that either. You learned that the trading
5 was very successful. There were times that everyone lost
6 access to press releases, but then they would get them back.
7 Over time, Arkadiy Dubovoy made some legitimate business
8 dealings with both Korchevsky and Khalupsky. Arkadiy and
9 Korchevsky started working at opening a hedge fund in the
10 Cayman Islands, as well as other businesses in the Ukraine.
11 Arkadiy also invested \$200,000 in Dolphin Trading,
12 Khalupsky's trading business. But he soon asked for the
13 money back because on upon further look, he didn't like the
14 way that the financials looked.

15 Things were going well until the hackers
16 discovered that Arkadiy Dubovoy wasn't sharing all the
17 profits with them. At that point, they cut everyone off
18 from the press releases. Arkadiy Dubovoy tried to negotiate
19 to get the press releases back. Over much of 2014 they
20 didn't have access.

21 You learned that at this point, Khalupsky offered
22 Arkadiy another way to access the press releases, the
23 information. And for a period of time, Arkadiy gave
24 Khalupsky money to trade in other accounts based on the
25 stolen press releases.

Summations of Ms. Nestor

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1 In January of 2015, Arkadiy Dubovoy travelled to
2 Ukraine and met with Roma, Roma and his boss. The last name
3 is Valeri. Now, there are two Valeris here. Valeri
4 Pychnenko, and there's a Valeri in the Ukraine. We'll call
5 him Odessa Valeri. The meeting didn't really go well, but
6 Roma convinced Arkadiy to use the stolen information once
7 again for just one day in January of 2015. We'll go into
8 more details on this.

9 When that didn't work out, Arkadiy's friend,
10 Valeri Pychnenko, offered to provide Arkadiy Dubovoy with
11 the stolen press releases. Pychnenko was involved in the
12 first part of the scheme as well, providing money to both
13 Korchevsky and Khalupsky for trading in their account.
14 Pychnenko was still getting the press releases from the same
15 hackers, but he didn't tell -- he didn't tell the hackers
16 that he was working with Arkadiy Dubovoy because Arkadiy
17 owed them money and wouldn't want to work with Arkadiy. So
18 the scheme changed. They were no longer accessing the
19 server in order to get the press releases. They were
20 getting it through email. Pychnenko set up an e-mail, and
21 Igor Dubovoy was now involved in providing the
22 press releases to Korchevsky in 2015.

23 You know that this is the point that Garkusha
24 started trading on the stolen information as well. He
25 passed up the first time, but in 2015, he started trading.

Summations of Ms. Nestor

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1 The scheme was becoming less profitable for the Dubovoy in
2 2015 because they had to pay both Korchevsky to do the
3 trading and the hackers to get the stolen press releases,
4 but it was still quite profitable for Korchevsky. The
5 scheme ended with the Dubovoy and the defendants' arrest.
6 So that is what happened here. That's the overview.

7 How do you know that these defendants really had
8 access to these stolen press releases, and how do you know
9 that they fully understood that they were receiving and
10 profiting enormously based on stolen information? There's
11 overwhelming evidence of this. Let's talk about it.

12 So first I want to take you through how you know
13 that Korchevsky and Khalupsky were actually accessing the
14 stolen press releases. You know both Defendants were
15 accessing stolen press releases for a number of reasons.
16 You saw emails where both Defendants were receiving log-in
17 credentials to access these stolen press releases. Both
18 Defendants' trading patterns are powerful evidence that they
19 traded on stolen press releases as well. And Arkadiy
20 Dubovoy and Igor Dubovoy told you that when Korchevsky and
21 Khalupsky had access to press releases, and you know that
22 Khalupsky actually sent stolen press releases to himself.

23 First, you saw this e-mail from Garkusha. He
24 received it from -- I'm sorry. This email from Pavel who
25 sent it to Garkusha. He received it on November 26th of

1 2010, attaching instructions on how to accurately
2 retrieve -- how to get stolen press releases. The emails
3 had log-in information at the top with an IP address,
4 actually the http, the 83.133 number.

5 You learned that the site that Garkusha received
6 access to was being operated by Ukrainian hackers. A hacker
7 will use the e-mail address warninggp, who you learned as
8 Ivan Turchinov, sent around video instructions on how to use
9 the site just one month before Garkusha got access. This
10 e-mail, Exhibit 206-T, Government's Exhibit 206-T, from
11 warninggp. You saw part of that video right here in court.
12 You know from sitting here at trial that warninggp was a
13 hacker, that one of the computers received in the Ukraine by
14 the Secret Service contained forensic evidence of the
15 newswires in this case -- or forensic evidence of the
16 newswires being hacked produced by Ivan Turchinov with the
17 email address warninggp. The warninggp e-mail was all over
18 the computer. That computer was called 6B War during this
19 trial.

20 Now, the way you know that the server access, the
21 access instructions that Garkusha received is the same
22 video -- or the same video that you saw here is actually
23 based on that IP. It's the exact same IP in Garkusha's
24 instructions. And at the bottom of this video, if you look
25 at the very bottom, the IP is exactly the same. You also

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1 know for other reasons, because if you compare the actually
2 instructions to the video, they're almost identical.

3 Remember the tutorial video that warninggp
4 centered around has a number of stages to it. But these are
5 the final instructions that had actual stolen press releases
6 on the server. The video instructed that after the user
7 chooses the file, he -- the admin panel, the admin panel
8 will download and zip the file. That's important. The
9 admin panel will download and zip the file. And the video
10 actually shows you how the system would unzip a number of
11 press releases to export. That's in this file,
12 Government's Exhibit 206-1-1T.

13 When else did you see that press releases were
14 being sent in a zipped file like this?
15 Government's Exhibit 323-A-1. On that hacked press release
16 that I talked about earlier that Khalupsky sent to himself
17 on December 18th, 2013, he was accessed to get on a computer
18 from a zip file. You can look at the bottom on the screen,
19 there's a zip file open, and that press release coming out
20 of a zip file. You know that Khalupsky was acting on stolen
21 press releases because the zip files contained stolen press
22 releases. This is a photograph that Khalupsky sent to
23 himself from one of his e-mail accounts to another one of
24 his e-mail accounts.

25 Now, the hacker's tutorial video showed you that

1 the server Garkusha, and later that both defendants were
2 accessing, had stolen press releases, including earnings.
3 This is a list, a snapshot from that video, and that's a
4 list of stuff that was on the actual server. And there are
5 a number of earnings releases on them.

6 The snapshot of the video here shows you that you
7 can click on the 2010 press release at the top at 207, and
8 there are a number down below. Now, this site houses
9 different types of press releases, including earnings
10 releases. So the hackers can't just grab earnings releases
11 when they're hacking these files. It grabs everything at
12 once, and then they have to sort through it and they put it
13 on the site. And that makes sense. It's set up so it acts
14 with the site -- or the server, like the defendants, to
15 decide which stolen press releases will make the most money.

16 Now, the instructions Garkusha received from the
17 server also advised that a VPN, or another method be used to
18 mask the user IP and other information, and you learned that
19 during this scheme, Korchevsky tried to do just that, and
20 I'm going to walk you through that in a little while.

21 Now, you saw the e-mail from Pavel Dubovoy to
22 Arkadiy Dubovoy on February 14, 2011. It contained the
23 codes used to access the stolen press releases early on. As
24 you can see in the chain, Pavel got these press releases
25 from someone with the email address of positive1@meta.ua.

Summations of Ms. Nestor

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1 There's 1gp, and now there's positive1@meta.ua. We'll call
2 them positive1.

3 Now Government's Exhibit 213-T shows you that
4 positive1 got the log-in credentials from warninggp. We now
5 have warninggp to positive1 to Pavel. Yet, warninggp is
6 Ukrainian hackers. On the same day, positive1 forwarded
7 these credentials to Pavel Dubovoy.

8 In Government's Exhibit 225-T you learned from
9 this e-mail, which is in evidence, as I said
10 Government's Exhibit 225-T positive1 is Roma Zayats. It's
11 at the bottom of this e-mail, romanzanov. And you know who
12 Roma is. I told you at the beginning you know who he is by
13 sitting in this trial. That's the Roma Arkadiy Dubovoy met
14 with in the Ukraine. He's the Roma who is the intermediary
15 between the hacker and the Dubovoy and the traders. This
16 e-mail shows you, not only that positive1 is Roma, but not
17 -- but also Khalupsky is in direct e-mail communication with
18 him and Pavel Dubovoy. The email from Khalupsky at the
19 bottom on October 18th, 2011 -- I'm sorry, the e-mail to
20 Khalupsky at the bottom, and then it's forwarded again to
21 Khalupsky from Pavel Dubovoy at the top. And you saw log-in
22 information that positive1 or Roma sent Pavel Dubovoy on
23 August 24, 2011. This is Government Exhibit 366-T. On the
24 left-hand side of the screen is a temporary password,
25 T133T133, and a bunch of exclamation points. You saw Pavel

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1 Dubovoy send almost an identical password to Korchevsky just
2 one month before. That's on the right, right side of the
3 screen. And that's Government's Exhibit 219-T. Even the
4 user names here are the same. And years later you saw that
5 they were still using very similar passwords. Look at
6 Government's Exhibit 301. On April 29, 2013, Igor sent
7 log-in and password information to Korchevsky using another
8 iteration of the same password. Exclamation point,
9 exclamation, exclamation 331T331T.

10 In 2012 you saw Pavel Dubovoy send a very
11 similarly text password to Khalupsky. In this e-mail, Pavel
12 told Khalupsky that something was acting up with the
13 dot net. And the clear inference from this e-mail on the
14 left-hand side in Government's Exhibit 253-T is that you
15 should use stargate11 to email the temporary password. You
16 know what that is? Pavel is telling Khalupsky that other
17 form of access is not working and he needs to access his
18 email account in order to retrieve these stolen press
19 release.

20 (Continued on next page.)
21
22
23
24
25

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1 MS. NESTOR: Pavel then provides Khalupsky a
2 temporary password that is almost identical to the one he
3 provided Korchevsky in 2011. And you know why that is, the
4 hackers have a system, they have a system for their passwords.
5 They use similar passwords over and over again with slight
6 changes or slight modifications.

7 And that Stargate email that I just showed you that
8 Khalupsky received, you've seen that Stargate11 email that
9 Pavel forwarded to Khalupsky before. You saw it on the iPad
10 that Arkadiy Dubovoy purchased for Korchevsky for his illegal
11 trading. You learned that an iPad was seized from Korchevsky
12 on the day of his arrest on August 11th, 2015. This is a
13 photograph of it, it's in evidence as Government Exhibit 487P.

14 On July 30th, 2012 there were four emails from
15 Stargate11 to Stargate11 found on this iPad, each with an
16 attachment. The FBI agent who testified said she tried to
17 open the attachments, but she couldn't. Now, she wasn't able
18 to see press releases attached because she wasn't able to open
19 the attachments, but you guys know what was happening that
20 day. Korchevsky made more than five trades on July 30th,
21 2012. All the purchases were in the window, meaning that they
22 were made after the press release was uploaded to the newswire
23 but before it went public, and some of the trades were just a
24 few minutes after the timestamps on this Stargate11 email.
25 Those trades are in evidence as Government Exhibit 8002. And

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1 you know what was happening here. Korchevsky was receiving
2 stolen press releases with the Stargate email just like
3 Khalupsky was. They are getting the same password, the same
4 emails. You know the hackers used email to disseminate press
5 releases when the server wasn't working, that's what this
6 tells you.

7 Now, speaking of this iPad that was seized from
8 Korchevsky, Arkadiy Dubovoy testified that Sergey Lachenko
9 (phonetic), somebody who worked for him at APD, bought this
10 iPad and bought this iPad for Korchevsky. Because Korchevsky
11 at the very beginning of the scheme asked Arkadiy Dubovoy for
12 an iPad, he asked him for a computer and he asked him for a
13 phone. Now, why was he asking for all these things?
14 Korchevsky understands that this illegal and he doesn't want
15 to use his own computers, he doesn't want to use his own phone
16 and he doesn't want to use his own iPad either. Remember, the
17 Apple custodian came in here and he showed you the Apple
18 records for the iPad. He told you Sergey Lachenko did buy the
19 iPad and that iPad, again, was found at Korchevsky's house on
20 the day of his arrest. There is no doubt that Korchevsky was
21 using the iPad that was found in his house the day of his
22 arrest, but you if need to know more we can go more.

23 You know that the user of this iPad was actually
24 using this iPad at the Hotel D Alleres, at the top it's
25 highlighted, on January 26th, 2012. The iPad logged into the

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3002

1 wireless network at that hotel. Now, this is before the
2 Stargate emails were sent. The Stargate emails are
3 highlighted in yellow, toward the bottom and middle of the
4 page. Learned from FBI Agent Racz that Hotel D Alleres is in
5 Geneva, Switzerland. You saw from travel records in evidence
6 as Government Exhibit 506 that Korchevsky traveled to Europe,
7 he didn't -- he traveled to London, he didn't stay in London,
8 he came back from Geneva during this time. He left on
9 January 22nd, 2012 and returned on January 28th, 2012. You
10 know who wasn't abroad during that time? Igor Dubovoy. He
11 was in the United States. That's what the travel records say.
12 You saw that his travel records are in Government Exhibit 502.

13 So I submit to you there's no doubt this is
14 Korchevsky using this particular iPad. There's an entry after
15 the Stargate emails also on August 15th, 2012, that's directly
16 after the four emails. That entry is for a wireless network
17 connection called UKR Telecom. SA Racz told that the UKR
18 Telecom is a Ukrainian telephone company. Igor wasn't in the
19 Ukraine at the time of the access either, he was back in the
20 United States, according to travel records, but Korchevsky,
21 who out of JFK and into the Ukraine just two days before the
22 August 13th, 2012 -- just two days before on August 13, 2012
23 and travel records don't show him returning to JFK until
24 August 31st, 2012. So he is in the Ukraine at the time that
25 this access to the UKR Telecom is made, so you know Korchevsky

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1 is using this iPad and you know he's accessing Stargate, the
2 email that we sent to Khalupsky and to Korchevsky and the
3 email which relates to hackers.

4 If you needed more, this iPad also has a bunch of
5 cookies on it, Government Exhibit 423. And those cookies are
6 all Finance Yahoo cookies, they are not construction company
7 cookies, which what Igor Dubovoy did, they are all finance
8 sites.

9 Now, as I said, you also know that the trading
10 activity in this case is evidence of the fact that defendants
11 had access to the press releases. I'll explain shortly when
12 we talk about the law, you don't need to actually find that
13 any single trade happened based on stolen press releases to
14 convict the defendants of the wire fraud conspiracy and the
15 securities fraud conspiracy. You do need to find it to
16 convict them of the two substantive counts of securities
17 fraud. But you do know that both defendants did trade on
18 stolen information. You have that information.

19 I want to talk about Mr. Korchevsky first. Now,
20 Mr. Korchevsky was conducting illegal trades in his own
21 accounts. Dr. Canjels, the expert that was just here
22 yesterday and testified before, told you that his analysis
23 covered a number of Korchevsky's brokerage accounts. And you
24 can see those, the slides are in evidence and in evidence as
25 Government Exhibit 8003. The accounts are spread out over a

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1 number of brokerage firms including E*Trade, Fidelity,
2 Jefferies and TDA. Remember, Korchevsky also had NTS Capital,
3 the trading business he started conveniently in 2011 when he
4 got the stolen press releases. As you know, until 2015 when
5 Igor started trading in the Dubovoy accounts, Korchevsky
6 wasn't just trading his own accounts, he was also trading in
7 the Dubovoy's accounts. You know that because Igor and
8 Arkadiy Dubovoy told you that, but their testimony is not all
9 you have. It was supported by IP data. And you've also seen
10 emails to that effect.

11 Now Special Agent Preis from the FBI testified about
12 the brokerage account IP data. He told you that he saw
13 Korchevsky accessing the Dubovoy brokerage accounts using the
14 same IPs that he used to access his own brokerage accounts
15 nearly 10,000 times between January 28th, 2011 and
16 February 17th, 2015. So you know Korchevsky was accessing the
17 Dubovoy's accounts 10,000 times.

18 Now looking at Korchevsky's trading from 2011 to
19 2015, Dr. Canjels had a number of different conclusions about
20 the trading in Korchevsky's brokerage accounts. Korchevsky's
21 trading activity changed dramatically in 2011 from earlier
22 periods to very short-term trading on earnings news. He
23 changed his pattern to do very short-term trading on earnings
24 news. He consistently made in-the-window trades on earnings
25 announcements. And Dr. Canjels found there was statistical

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1 correlation between Korchevsky's trading activity and the
2 upload time of the press release.

3 Dr. Canjels testified there was a virtual certainty
4 that this pattern was not random, and you know this pattern is
5 not random because of all the other evidence you saw in this
6 case. You also know that there is no one particular time that
7 press releases are uploaded to the newswires. Upload times
8 vary, and upload times are not public.

9 Now Dr. Canjels also concluded that Korchevsky's
10 trading was very similar in nature to the Dubovoy's trading
11 during this period of time. Korchevsky's trading shifted
12 during certain periods as well. Shifted from one newswire to
13 another newswire to another newswire.

14 Dr. Canjels told you that when he looked at trades
15 of three days or less, meaning short-term trades in
16 Korchevsky's brokerage accounts during the period of 2011 to
17 May 2015, in the middle of 2015, he looked at equities listed
18 on the exchanges, he saw that when Korchevsky was trading
19 around earnings and guidance news, 90 percent of the time his
20 first order began after the press release was uploaded to the
21 newswire, but before it was publicly disseminated. And the
22 vast majority of Korchevsky's profits during this period of
23 time came from these trades.

24 Now, Dr. Canjels saw that Korchevsky's return on
25 investment was 1600 percent from January 2011 to May 2015, the

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3006

1 period when he had the stolen press releases. If you compare
2 that amount of money in Korchevsky's account at the beginning
3 it was only a little under a million. At the end, in May
4 2015, it had a net profit of \$15 million. In the span of just
5 four and a half years. Dr. Canjels explained that this rate
6 of return is like double your money in that amount of time.
7 And as I said at the beginning, Dr. Canjels testified that
8 Korchevsky's trading changed from 2009 and 2010 to 2011. You
9 saw the slide, it's Government Exhibit 8003.

10 While he had previously made some short-term trades
11 on earnings news in 2009 and 2010, as you can see here, these
12 constitute a very small proportion of his round-trip positions
13 within those years. Remember a round-trip position is simply
14 opening a position and closing a position in the same year.
15 Short-term means it's three days or less.

16 Now in 2009, his short-term trades made up only
17 about 15 percent of Korchevsky's trading, and in 2010 only 20
18 percent. In 2011, when Korchevsky had the inside information,
19 it was over 60 percent. In 2012 and 2013, it was 70 percent
20 of his trades.

21 You heard testimony during this trial that the
22 hackers cut the Dubovoys off, right. Korchevsky and Khalupsky
23 and the Dubovoys were cut off in 2014. You see that 2014,
24 Korchevsky's trading dramatically decreases, just generally
25 decreases. Then in 2015, when you know that he has access to

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1 the press releases again, he has 174 total trades, round-trip
2 trades, 124 of these are three days or less around earnings
3 events in just half a year. From 2015, Korchevsky's short
4 positions once again rises 70 percent of his trading activity.
5 And the amount he invests and profits during the years he has
6 the stolen press release are very telling when you look at it
7 against 2014 when he doesn't have access to the press releases
8 because the hackers have cut him off.

9 In 2011, 2012 and 2013, he invests millions of
10 dollars in short trading -- short-term trading on earnings
11 releases, and he makes millions as well. In 2014, when he
12 loses access to the press releases, he invests only slightly
13 over \$500,000 and makes only about 55,000.

14 And remember, you saw this graph during Dr. Canjels'
15 testimony. He explained that this graph showed you which
16 newswires had issued a press release for the particular trades
17 that Korchevsky made between January 2011 and May 2015.
18 Dr. Canjels testified that the pattern you saw was surprising
19 because it showed that during specific periods of time
20 Korchevsky was investing by newswire. He was actually
21 investing by PR Newswire, Marketwired or Business Wire.

22 Dr. Canjels explained that if someone is trading on
23 earnings releases, he would expect to see these colors all
24 mixed up because you wouldn't expect an earnings trader to
25 trade on press releases on any one newswire. That wouldn't

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1 make any sense. You guys can use your common sense, that's
2 why you're picked as jurors. It simply doesn't make any
3 sense.

4 Representatives of the newswires actually spoke to
5 you and they said that they are all competitors, they all go
6 after the same clients. So it makes no sense for somebody to
7 trade only in one particular newswire during certain points in
8 time. It makes no sense unless you're using stolen
9 information from that particular newswire at that particular
10 time.

11 Look at the first five months in 2015, working your
12 way backwards start with the green on the right side of this
13 chart, each bar represents a month of trading. Korchevsky
14 trades almost exclusively on press releases issued by Business
15 Wire during that period of time. And you know why, you see
16 only Business Wire press releases in the Rupion and Loscal
17 email accounts. Those are the accounts -- and I'll remind you
18 about those again, those are the accounts that Igor Dubovoy
19 and Pychenko make up at the very end in 2015 that they used
20 to trade. All you see in there is Business Wire, all he's
21 trading on is Business Wire.

22 Now if you move left from the Business Wire green
23 bars, you'll see Marketwire appears. Again, you see a lot of
24 red bars not a lot of anything else. That's in 2013. In
25 2012, if you look at 2011, the middle of 2011 to March 2012,

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1 those are the blue bars, Korchevsky is trading almost
2 exclusively on press releases issued by PR Newswire, that's
3 the blue. Look what happens in March 2012, that's the third
4 blue bar in 2012, very little. You can hardly see it.
5 Trading stops in PR Newswire completely and you know why that
6 is, because you heard about it during this trial. There was a
7 chat on one of those computers that was seized in the Ukraine,
8 the warningpp computer, we called it 6B and war, but it was
9 the computer warningpp, the hacker you've come to know. That
10 chat indicates that PR Newswire blocked the hackers in
11 March 2012. It's in evidence as Government Exhibit 406T. And
12 March 2012 happens to be the exact same time that PR Newswire
13 retained its forensic expert. He actually came and testified
14 here. And that's when PR Newswire discovered they were
15 hacked. So you know why Korchevsky stops trading in PR
16 Newswire in March of 2012, the hackers lost access and they
17 were no longer able to get PR Newswire press releases.

18 Ladies and gentlemen, we also need to talk about
19 Khalupsky's trading. Because you may not have caught it as
20 Dr. Canjels was testifying about various accounts, but he did
21 an analysis of Khalupsky's trading as well, he did an analysis
22 of his trading in the Dubovoys' accounts. Khalupsky was in
23 the Ukraine, but he was trading in the Dubovoy accounts here.

24 We represented -- we presented you with information
25 that shows you that Khalupsky was trading in the Dubovoys'

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1 accounts through IP information and emails. So just like
2 Korchevsky, Special Agent Preis testified that he was able to
3 determine the two particular IPs that accessed Khalupsky's
4 emails were also accessing the Dubovoys' brokerage accounts on
5 more than 1,200 occasions from July 2011 to March 2014. One
6 of those IPs comes back to Dolphin, Khalupsky's trading
7 company in Odessa, Ukraine.

8 Dr. Canjels looked at two of the Dubovoys' accounts
9 that Khalupsky was accessing. You heard it as the TDA7954
10 account and the Merrill Lynch 9078 account. The IP data
11 showed that the TDA7954 account was accessed September 26th,
12 2011 through August 7th, 2012; and the Merrill Lynch account
13 was accessed from February 14th, 2013 to March 17th, 2014.
14 Dr. Canjels did an analysis of these accounts during the time
15 period that IP showed Khalupsky actually accessing the
16 accounts. And Dr. Canjels' analysis actually gives you a
17 window on Khalupsky's illegal trading.

18 By the way, other than IPs, you also saw emails,
19 other evidence that Khalupsky was actually trading in the
20 Merrill Lynch account, the 9078 account and these emails were
21 in -- one email was sent in February 2013 and it seems to be
22 sent from Khalupsky and somebody employed by Khalupsky. And
23 those emails continue until October of 2013. You can see that
24 on the right-hand side. The left-hand side are the ones that
25 are sent in February 2013, on the right-hand side is the

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3011

1 October 2013 email that Igor Dubovoy actually responds to.
2 And he's actually providing access to the account here. He's
3 answering questions and providing additional access to the
4 account.

5 Let's look at the accounts that Dr. Canjels looked
6 at. Let's start with the TDA that Khalupsky was trading in.
7 What do you see? First, you see that this account is funded
8 right around the time we see that Khalupsky starts accessing
9 this account, September 26th, 2011. In fact, a deposit of
10 nearly a million dollars was made to the account on that day.
11 In the span of less than six months, Khalupsky and his traders
12 made almost 2.7 million net profits in this account.
13 Dr. Canjels determined that the return on investment in this
14 account was over 124 percent.

15 Just as a point of comparison for you, the FINRA
16 expert that was called by the government, Mr. Carocci, he
17 testified that the rate of return in 2011 on the S&P 500 was
18 about 2.1 percent. That's \$2.11 on a hundred. And the S&P
19 500 is a publicly traded -- a public way to invest. That's a
20 rate of return where you don't have stolen press releases.

21 The trading in the TDA account was similar to the
22 Korchevsky account in that it was mainly on earnings and
23 guidance news and the earnings and guidance trading in the
24 account almost exclusively happened in the window between
25 press release uploads to the respective newswire and before

1 distribution to the public. And Dr. Canjels testified that
2 there was a similar statistical significance or a correlation
3 between the upload time that the press releases are uploaded
4 to the newswire and the actually trades. So the trades are
5 made in correlation to the upload time to the newswire of the
6 press release.

7 So what does that mean to you? It means that just
8 like Korchevsky, Khalupsky and his traders were also using
9 stolen press releases to trade, and that's why you see such a
10 strong correlation between upload time and the first order
11 time being placed in the account.

12 Just like Korchevsky's accounts, here too, you see
13 that the accounts traded almost exclusively in the span of PR
14 Newswire press releases for almost six months, between
15 September 2011 to February 2012. Because again, as you know,
16 in March 2012 PR Newswire kicks the hackers out.

17 With respect to the Merrill Lynch account, you saw
18 very similar activity. Dr. Canjels testified that the last
19 trade in this account happened on March 2014 right when the IP
20 access for Khalupsky stopped. That also coincides with the
21 lost access to the stolen press releases which you know
22 happened at some point in the 2014. This account has a
23 61 percent return on investment with a net profit of just over
24 617,000. As with the TDA account, the vast majority of the
25 trading in this account were on securities on exchanges or

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1 trades of three days or less, short-term trading. The three
2 longer trades that were actually made in this account lost
3 money. All the short-term trades based on earnings and
4 guidance news were made after the press release was uploaded
5 to the newswire and before it was disseminated to the public.
6 And Dr. Canjels testified that there was a similar statistical
7 significant correlation between the upload time and the trade
8 time in the account.

9 And just like the TDA account, Korchevsky's
10 accounts, here too, you saw that there was trading almost
11 exclusively based on Marketwire press releases around
12 March 2013 to after October 2013. Trading wasn't happening
13 every week, but when it happened it was almost always around a
14 Marketwire press release.

15 Now, the evidence we just went through establishes
16 that both defendants had access to the press releases because
17 they received log-in credentials to access the stolen press
18 releases. You also saw that both defendants' trading was
19 consistent with access to the stolen press releases because
20 the cooperators told you they had access to the stolen press
21 releases and the evidence just not corroborated what they
22 said, it confirmed what they said. And Khalupsky sent himself
23 the pre-distribution Oracle press release. Those are the big
24 takeaways of what we just saw.

25 Now we need to talk about how both defendants knew

1 that they were trading on press releases stolen from the
2 newswires. We established access, now we have to talk about
3 how they knew. Let me be clear, all the evidence we just
4 discussed is proof of what the defendants knew, but there is
5 more.

6 Let's talk about how Korchevsky knew the nature of
7 the scheme to defraud here and how he knew that -- or he
8 knowingly and willfully participated in that scheme. Those
9 words will become important to you.

10 You know that Korchevsky knew he was trading on
11 press releases stolen from the newswires by the hackers for a
12 number of reasons, but some of those reasons are that he used
13 prepaid phones devoted exclusively to communicating with the
14 others involved in the scheme and hotspots to mask his IP. He
15 threw away computers that were used for illegal trading and
16 deleted emails and text messages. He used code to communicate
17 with his co-conspirators, and he had access to a Russian-based
18 email account that had stolen press releases on it. And the
19 cooperators told you, but the documents, the phones, the
20 \$15 million in illegal profits make clear, Korchevsky knew
21 exactly what he was doing from day one.

22 Now you learned at the beginning of the scheme
23 Korchevsky asked Arkadiy Dubovoy for a computer and I told you
24 later he asked for an iPad and phones and Igor Dubovoy told
25 you that Korchevsky would ask for these all the time. He

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1 would ask for computers and phones and Igor would buy them.
2 You saw evidence of that during this trial. You saw a photo
3 of Mr. Korchevsky's house and the safe in the closet of his
4 master bedroom. You know that inside that safe there were
5 three cell phones. Those cell phones are in evidence,
6 Government's Exhibit 485, 489-1 and 489-2. That wasn't it.
7 You heard from Special Agent Taylor from the FBI, who was
8 there on the day of the Korchevsky's arrest, he carried out
9 the search and he found another phone in Korchevsky's bedroom,
10 that's in evidence Government Exhibit 484. It's the 9518
11 phone. Let's talk about that phone.

12 This is a photograph of that phone, it's Government
13 Exhibit 484. It's the 9518 phone. The photo of the phone
14 seized from Korchevsky's bedroom. Now, the back cover is
15 taken off in this photo to show you the note that was found
16 inside the cover on the battery of the phone. The note has a
17 phone number and a pin written on it. Igor Dubovoy testified
18 he purchased this specific phone for Korchevsky. He knew that
19 because he created the fake address and gave the phone a
20 contact similar to his uncle Pavel Dubovoy, Paul Dub. It says
21 it right there on the phone on the note. He explained to you
22 why he made up this name and address. He knew the phone was
23 going to be used for the illegal scheme and he didn't want to
24 provide any legitimate information. This is a 678 area code,
25 ladies and gentlemen. That's an Atlanta area code. That's

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1 where the Dubovoys lived, not Korchevsky.

2 You saw that almost all of the text messages on this
3 phone were deleted, 212 of 213 were deleted. You also saw who
4 Korchevsky was talking to on the phone. It was exclusively
5 used to speak to Igor, Arkadiy, and Pavel Dubovoy. There's
6 the contact information. That shows you that messages were
7 deleted, and this shows you who's in the phone.

8 Remember, you know from records introduced here at
9 trial that 6088 number, that's a number for Arkadiy Dubovoy.
10 And the number right below that, the 2359 number, that's the
11 number for Pavel Dubovoy, and then there are two numbers for
12 Igor Dubovoy on this phone, AA Igor and AA Igor 2.

13 Igor Dubovoy recalled installing the server access
14 program on the computers he would buy for Korchevsky so that
15 Korchevsky could access the server remotely. Now, this is
16 before Igor Dubovoy knew exactly what was going on. He would
17 get the server access from Pavel Dubovoy, who was providing
18 the access to the hackers.

19 Now later in the scheme in 2015, Igor actually
20 personally delivered a Dell Latitude laptop to Korchevsky. He
21 flew to Philadelphia, and you see that record here. And there
22 are text messages that are in evidence and Igor Korchevsky
23 exchanged -- Igor gave the laptop to Korchevsky, it's a Dell
24 Latitude and there was a Dell Latitude laptop recovered from
25 Korchevsky's house on the day of his arrest.

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1 Now you learned what Korchevsky did with the
2 computer screens, I think I already mentioned this. He would
3 break them apart and throw them in the trash when he was in
4 the Ukraine. And that explains why Igor Dubovoy had to get
5 Korchevsky computers so many times. And this is Government
6 Exhibit 357. It confirms the travel by Igor Dubovoy.

7 By the way, you saw text messages between Korchevsky
8 and Igor Dubovoy on April 14th, 2014, where Korchevsky is
9 asking for a computer and hotspots. Igor confirms that he's
10 sending Korchevsky the computer to which Korchevsky responds,
11 more important hotspot, and there go the exclamation points,
12 you'll see those a lot, those and question marks.

13 You know what a hotspot is. It certainly is used to
14 access the Internet when you travel, but it also has the added
15 benefit of masking your computer's identification with an IP
16 tied only to the hotspot, which Korchevsky would keep
17 replacing and Igor would keep buying.

18 You also saw evidence of payments to Korchevsky
19 during the course of this scheme. Government's Exhibit 2003-6
20 is just one example. Igor Dubovoy testified about this check,
21 it was for \$70,000 to Korchevsky. He told you this was for
22 Korchevsky's 12 percent profit generated from illegal trading,
23 which you know is how much Khalupsky was being paid as well.
24 It also happens to be -- withdrawn.

25 But what makes -- but make no mistake here,

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1 Korchevsky wasn't just getting paid to trade in the Dubovoy
2 accounts and he wasn't just trading in his own accounts
3 either. He knew from day one who the information he was
4 getting -- who his trading came from. And he understood that
5 in order to keep making millions of dollars he needed the
6 hackers. You saw Government Exhibit 353 that Korchevsky
7 knew -- in this exhibit you know that Korchevsky knew about
8 the negotiations with the hackers. There's a reference to
9 Roman, that's Roma. And Mos or it says Mos, that's Pychnenko.
10 Igor Dubovoy testified about that.

11 Now, this is in 2014 when the hackers had cut the
12 Dubovoys and Pychnenko -- and Korchevsky and Khalupsky off.
13 Here, Korchevsky is being told what it would cost for the
14 Dubovoys to keep getting the press releases. Korchevsky's
15 response should come as no surprise. He encouraged the
16 Dubovoys to pay the hackers so he could keep trading on
17 illegal information. As this email indicates and Igor
18 testified, the reference to 100K per week agreed was a
19 reference to the tentative agreement with Roma for access to
20 the stolen press releases. And the reference to M-O-S, Mos
21 was a reference to Pychnenko. Pychnenko was going to charge
22 70 percent and they wanted a \$300,000 down payment. Igor
23 Dubovoy testified that he and his father were skeptical about
24 this deal because they were not making that much money and
25 this was really expensive. They had a conversation with

Summations of Ms. Nestor

3019

1 Korchevsky, but he thought the terms were reasonable. And you
2 know why that is also, Korchevsky is not paying for the stolen
3 information, so it really doesn't concern him very much.

4 Arkadiy Dubovoy is paying the hackers and he has no idea that
5 Korchevsky is making millions of dollars in his own accounts.

6 You saw more evidence that Korchevsky new about
7 Arkadiy Dubovoy's negotiations with the hackers. In January
8 2015, Arkadiy traveled to the Ukraine to negotiate getting
9 access to the press releases with Roma and his boss, Valeri.
10 We talked about this meeting, but just to remind you. The
11 negotiations fell apart rather quickly. Remember, at this
12 point in 2015 Arkadiy Dubovoy -- the hackers realize that the
13 Dubovoys haven't been paying them all their money, they
14 haven't been paying from each account that they have. And
15 Valeri confronts Arkadiy Dubovoy about that and Arkadiy
16 Dubovoy refuses to pay. But Roma is a connection and Roma
17 asked him to take this access for one day, it would be \$50,000
18 for one day. And you see text messages and phone calls
19 corroborating what Arkadiy Dubovoy told you during his
20 testimony. You see from call logs, which are in evidence as
21 Government Exhibit 403-a, that Korchevsky was the one that was
22 accessing the information on the one day they got access
23 through Roma in 2015. That day is full of calls and text
24 messages with Roma and Korchevsky back to back.

25 If you look at the next slide also 403-a, at the end

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1 of the day on January 27th, 2015, Arkadiy Dubovoy told Roma he
2 wasn't happy with how it went. That's the text at the very
3 bottom of the slide. Arkadiy to Roma. And that's around when
4 the second phase began where Arkadiy and Igor Dubovoy started
5 receiving the information from Pychnenko instead of Roma.

6 (Continued on the next page.)
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Summation - Mr. Nestor

3021

1 MS. NESTOR: Now as I already told you, things
2 worked a little differently during this time in 2015. There
3 was no -- there was no more server, right? Arkadiy Dubovoy
4 had a disagreement with the hackers and with Valeri, their
5 boss, so he didn't want -- Valeri didn't want to buy Arkadiy
6 Dubovoy's stolen press releases.

7 Pychnenko interjected with the intermediary, but
8 obviously Pychnenko can't tell Valeri that he is giving
9 Arkadiy Dubovoy press releases. He can't give Arkadiy Dubovoy
10 access to a server. The hackers know IP. The hackers can
11 track it. I think you saw that here actually. He was
12 actually asked if Arkadiy Dubovoy was hacked. You saw that in
13 your IP data. That's how he found out that Arkadiy Dubovoy's
14 been giving the hackers all their money.

15 And during this part of the scheme, Igor Dubovoy
16 becomes more involved. He testified to that. Pychnenko gets
17 a Ukrainian-based email account. It's called Rupion. And he
18 gives Igor Dubovoy access to it. It gives him access to
19 stolen press releases. There are no more servers, he has
20 access to this email account and it all gets deposited in this
21 account.

22 Igor then provides the stolen press release to
23 Korchevsky, using a number of email accounts, including a
24 Russian-based email account called vmarken, and another
25 web-based account called Loscal based -- Loscal starts at end

1 of March of 2015.

2 Korchevsky then reviews the press releases and
3 either called or texted Igor instructions on how to trade.
4 Igor simplifies Korchevsky instructions, and at this point
5 Garkusha's trading and Momotok. You heard about briefly also
6 trading. And he provides this to his partners, he provides
7 direction to them of how to trade.

8 During this period of time, 2015, Khalupsky was not
9 trading, as far as we know.

10 So with respect to the vmarken email account,
11 remember this is the one that Igor sets up for Korchevsky. On
12 January 27th, 2015, the one day that they got access to the
13 press releases from Roma, went back to January 27th, 2015,
14 before they're finally done with Roma, Igor sent Arkadiy
15 Dubovoy the vmarken email address and in this a call to text
16 about asking stolen press releases.

17 These records show you that Igor send the vmarken
18 email address while Arkadiy Dubovoy is on the phone with
19 Korchevsky. You can actually see this. Vmarken 5:24 and
20 Korchevsky 5:24. One minute and 50 second call, right above
21 it. That's how Korchevsky learned about the vmarken account.
22 Arkadiy provided it.

23 Now remember, Igor Dubovoy told you when he set up
24 the vmarken account, it was for the purposes of this. He made
25 up a fake name in the account, and that's in Government

Summation - Mr. Nestor

3023

1 Exhibit 3057(T), pictured here on the slide. And you see that
2 there's a forward -- well, there's an email from Varta Marken,
3 vmarken to vmarken, and it's forwarded to the Rupion account.

4 Again, the Rupion account is the one that Pychenenko
5 set up for purposes of the team in 2015. Igor accesses the
6 press release in that account.

7 You saw a number of emails in the vmarken account.
8 It lists the tickers being sent from vmarken to vmarken. And
9 then forwarded to the Rupion email account. Here's just one
10 example of those emails.

11 The point here is that Igor Dubovoy told you
12 Korchevsky had access to the vmarken account and he was
13 writing these lists, which included upcoming press releases
14 that Korchevsky knew were going to be issued.

15 As you heard during this case on numerous occasions,
16 everyone knew when press releases were going to be issued.
17 What they didn't know is what those press releases were going
18 to say.

19 You know why Korchevsky is sending these emails from
20 vmarken to vmarken because you know that Pychenenko sometimes
21 asked what Korchevsky was interested in. So he could, you
22 know, he could trade. That's why Pychenenko sends Igor these
23 lists. Pychenenko forwards it along to the Rupion email
24 account, which you know again Pychenenko set up, Pychenenko
25 and Igor. Korchevsky doesn't have access to the email

Summation - Mr. Nestor

3024

1 account. He sends the list to Pychenenko. He's accessing the
2 press releases directly from the hackers at that time.

3 And by the way, this isn't the first time you see
4 this. You also saw text messages from Arkadiy and Pavel
5 showing that Pavel asked similars questions when he was still
6 involved in 2014. There are chats between Pavel and Arkadiy
7 in 2014 where Arkadiy asks Pavel if he forgot the server
8 recording, and Pavel asked Arkadiy, Vitaly, referring to
9 Pychenenko, has something very important he's interested in
10 that he wants to see. This is Government Exhibit 403-1.

11 You know what server this chat is about. It's about
12 the server that the hackers were providing access to. And
13 Arkadiy's trying to regain access to the server in 2014. He
14 testified he was in negotiations. You saw emails that he was
15 actually in negotiations with the hackers in 2014. I submit
16 to you the very important information Pavel is asking
17 Korchevsky is for the tickers Korchevsky's interested in.

18 You also saw a similar email from Korchevsky to
19 Dubovoy in June of 2015 where he sends a list of tickers.

20 And you've seen that before. And Korchevsky here is
21 indicating that the press releases will be uploaded before or
22 after market close, right, because, as I said, you know when
23 press releases will be uploaded, you just don't know what
24 they're going to say.

25 Again, he's sending a message to Pychenenko -- I'm

Summation - Mr. Nestor

3025

1 sorry, Vitaly Korchevsky is sending it to Igor Dubovoy, and
2 that is this list of tickers. And the point would be for Igor
3 to send it to Pychenenko, and Pychenenko can find that
4 information. This is 2015. And at this point, they are just
5 (inaudible) email accounts after the press release.
6 Pychenenko's forwarding it to Igor, Igor's forwarding it to
7 Pychenenko.

8 And, ladies and gentlemen, one of the first things
9 you saw during this trial was evidence of the login
10 information for Loscal email account being sent to Korchevsky
11 by Igor Dubovoy. It might have not meant anything to you at
12 that time.

13 Special Agent Alan Davis of the Secret Service
14 testified that the Loscal email address and password were sent
15 via text message from Igor Dubovoy's 771 phone to Korchevsky's
16 917 phone on March 31, 2015.

17 When Special Agent Pierce, the first witness that
18 testified from the Secret Service, you learned that she was
19 able to use this password to access the Loscal account. The
20 password didn't change from March 31st, 2015 until the day
21 that Korchevsky and the Dubovoy's were arrested on August 11th,
22 2015. This text message shows you that Korchevsky had access
23 to the Loscal email account where Igor Dubovoy sent
24 pre-distribution press releases. It also corroborates what
25 you were told you about the Loscal account.

Summation - Mr. Nestor

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1 You also saw Igor Dubovoy's phone. It was seized
2 from him on the day of his arrest. It's Government
3 Exhibit 481. It's on the left side of the screen here.

4 It is the same Loscal login information on the
5 inside of the phone. This is the piece of paper found on the
6 inside of phone behind the battery cover. That's the pin
7 1596.

8 Remember the phone I showed you for Korchevsky that
9 was found at his house on the day of his arrest. It's in the
10 picture to the right 484-P. That phone had the same pin,
11 1596.

12 Now 1596 was written on both pieces of paper inside
13 both phones. And you learned what 1596 was. It was a pin for
14 a calling card. This wasn't just a regular phone that you
15 would have if you were paying AT&T monthly, this was a phone
16 you would actually use a calling card for.

17 And Igor Dubovoy told you this. He used his phone,
18 Government Exhibit 481, to log into the Loscal account to
19 provide Korchevsky with press release and to chat.

20 The Secret Service actually looked at the Loscal
21 account and found nothing in the in box. The folders in the
22 account looked like this.

23 There was only one email in the sent folder which
24 appeared to be an email forwarding the D press release
25 originally sent from the Rupion email account. The email was

Summation - Mr. Nestor

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1 forwarded to another email account RIGA12 RIGA12. And Igor
2 Dubovoy told you that he thought he forwarded that email
3 because he believed he forwarded it to (inaudible).
4 Everything else was deleted.

5 Special Agent Pierce testified while she saw emails
6 being sent from the Rupion email account to Loscal, there was
7 nothing in the Loscal email account, other than this one email
8 sent to RIGA12 RIGA12. They were all deleted.

9 Now the Rupion email account has several hundred
10 emails in it. The Rupion.ru email had several hundred emails
11 in it. They start on February 9th, 2015. The Rupion account
12 also had some emails from vmarken, which I've already
13 discussed with you. The other email that the Korchevsky
14 received and forwarded to this account.

15 Now, that's telling because remember, we just talked
16 about how there were 10,000 overlapping IP hits between
17 Korchevsky's brokerage accounts and the Dubovoy brokerage
18 accounts. The IP gets stumped on February 7th, 2015. Just
19 two days before the emails start coming this the account. And
20 you know what happened, because Igor Dubovoy testified, that
21 once they started using this system, Korchevsky was no longer
22 trading in the Dubovoy account. Igor would do the trades.
23 And that's exactly when the email start arriving in the
24 account, right when they began.

25 You know why we no longer see Korchevsky acting in

Summation - Mr. Nestor

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1 these accounts, right? Rupion is set up and is trading
2 through Rupion and is trading only in those accounts sending
3 text messages and making calls to Igor giving him direction of
4 how to trade. You've seen those text messages, and you will
5 see them again in a moment.

6 Now, in the sent folder of the Rupion email account,
7 the secret service found emails forwarded to the Loscal
8 account, as I said. Agent Pierce testified that the emails
9 all contained press release attachments, many of which appear
10 to be in draft form. The email to Rupion to Loscal accounts
11 start on March 31, 2015, exactly when Igor Dubovoy sent the
12 text message with the Loscal sticker and password to
13 Korchevsky.

14 In fact, the first email attaching the press release
15 from the Rupion account to the Loscal account was on
16 March 31st, 2015. There's that sticker. And here's the first
17 entry right above it to the Loscal account.

18 So the first email attaching the press release from
19 the Rupion account to the Loscal account was on March 31,
20 2015, at 1:48. You see at the very top that entry. That was
21 just moments before Igor sent the message to Korchevsky with
22 the Loscal login at 1:52 p.m.

23 Now, Investigator Bolinder testified towards the end
24 of trial here. He reviewed the Rupion and Loscal accounts.
25 He made a chart of the trades that correlated to the

Summation - Mr. Nestor

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1 pre-distribution press releases that were found in the Rupion
2 account. That chart is in evidence as Government Exhibit 703.

3 He also matched those trades up to text messages
4 between Korchevsky and Igor Dubovoy. He made a chart of that
5 information as well. And that's in Government Exhibit 704.
6 So 703 and 704 are the two charts that chart out the Rupion
7 and Loscal trading.

8 The takeaway from Investigator Bolinder's work is
9 very important. Because if you look at the period of time
10 where we see press release and Rupion email account and the
11 forwards to Loscal, you can see that Korchevsky's trading
12 almost exclusively on stolen press releases.

13 Investigator Bolinder testified that he found 145
14 unique press releases all from business wires in the Rupion
15 email account between February 19th and May 28th, 2015. 135
16 of those were pre-distribution press releases, meaning they
17 had not been distribute to the public when they appeared in
18 the Rupion email account or were forwarded to Loscal.
19 Korchevsky did not trade on the ten press releases in the
20 email account that were already public.

21 Korchevsky traded on 97 of 135 press releases. He
22 had a total of 104 trades. The total of that period of time
23 he did 104 trades in securities listed on that sheets.
24 Ninety-seven of the trades correspond to press release found
25 in a Rupion email account. That is 93 percent of his trades

Summation - Mr. Nestor

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1 for that period of time.

2 Mr. Carocci from FINRA testified, and he told you
3 there are more than 6,000 companies that trade on the New York
4 Stock Exchange and the NASDAQ. Those companies issued
5 earnings announcements. Korchevsky traded on 104 securities
6 listed on exchanges during the Rupion period. And more than
7 90 percent of those trades were on tickers from press releases
8 that were found in the Rupion email account. All three
9 distributions, hacked stolen press releases.

10 Ladies and gentlemen, that is damning evidence that
11 Korchevsky was trading on stolen press releases. You should
12 look at them on Exhibit 703 and 704 in your deliberations.

13 And the text messages you saw between Igor Dubovoy
14 and Korchevsky during this 2015 period are also extremely
15 powerful evidence of Korchevsky's involvement in this scheme.

16 Investigator Bolinder matched those text messages up
17 to the trades that happened in the Rupion and Loscal accounts.
18 And Igor Dubovoy interpreted the text messages for you. And I
19 say interpreted with a purpose. Because these need
20 interpretation. You saw texts like the one at the top of the
21 slide from April 27th, 2015. They didn't mean much if you
22 didn't know the code. You learned to use the code so that no
23 one can figure out what you're talking about, because they're
24 talking about illegal trading.

25 Korchevsky would send just the first letter of a

Summation - Mr. Nestor

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1 ticker, as you see here. I'm sorry, as you see here, he'll
2 send the number, six; one, two, three, four, five, six. That
3 means the number of the press release that came in that day,
4 which one was emailed in sequential order. And those are the
5 emailed to the Loscal account.

6 And the two things collectively discuss whether any
7 press releases that were coming in on a particular day, the
8 bottom portion of this five of text messages from April 20th,
9 2015, it shows you that. It is evidence that these two aren't
10 talking about the weather, they're talking about press
11 release, right? He says, very suspicious, today it's raining
12 here. I think you know that he's not very suspicion that,
13 it's raining in Pennsylvania but not raining in Atlanta.

14 You remember that Igor Dubovoy you that it's strange
15 that he hadn't received any press release since a lot of
16 companies are coming out with earnings, because as you know,
17 they know when earnings are coming out, they're not getting
18 press releases. Korchevsky is getting the press releases.
19 This is Government Exhibit 707B.

20 Investigator Bolinder testified that his review of
21 trading data indicated that Korchevsky generally made the
22 largest profits during the period of time. And he invested
23 more money than the Dubovoy. All told, the completed trades
24 between February 19, 2015 and May 28th, 2015, Korchevsky made
25 1.385 million, and the Dubovoy profited slightly more than

Summation - Mr. Nestor

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1 247,000. Khalupsky made close to 13,000.

2 And that should make sense to you, ladies and
3 gentlemen, because both Igor and Arkadiy Dubovoy told you the
4 illegal trading wasn't profitable in 2015. Arkadiy actually
5 said it was more problem than earnings.

6 Korchevsky wanted to keep going, and that's when he
7 gave Arkadiy Dubovoy \$500,000. Igor Dubovoy called it
8 skin-in-the-game money. The idea was, you can't keep paying
9 for these hackers, where's your money? And so Korchevsky
10 borrows \$500,000. And you saw that wire during this trial.

11 And the text messages between Igor Dubovoy and
12 Korchevsky towards the end of this were so significant. It
13 shows knowledge regarding this email. These are text
14 messages -- again, in June and July 2015, look at the number
15 of question marks over and over and over again in June.
16 Korchevsky's frantic in these conversations. He's desperate
17 to get the stolen press releases. Because you saw from the
18 2014 period he need them if he wants to trade. He's become
19 addicted to them. Igor keeps saying say no or don't know yet.

20 On June 9th, 2015, Korchevsky traded -- texted Igor
21 end of the music, question mark? What does AR say? You know
22 what he's talking about. Are we getting any more press
23 releases? What does Arkadiy Dubovoy say? AR.

24 And the last message between and Korchevsky is on
25 July 16, 2015, Exhibit 707B. Igor tells him he can't write

Summation - Mr. Nestor

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1 today -- I'm sorry, we're at the high mark today, and he'll be
2 in touch on Monday. And you saw what happened next. This is
3 July 16th, 2015.

4 On June 21st, 2015, just a few days after the last
5 text message between Igor and Korchevsky, Korchevsky and
6 Arkadiy Dubovoy start texting. You see the same and question
7 marks from Korchevsky. And the same instructions from Arkadiy
8 Dubovoy. We're now waiting. Or it won't happen.

9 These text messages are damning evidence that
10 Korchevsky's trading on stolen press releases, because he
11 shows he was desperate for them.

12 So you know that Korchevsky knew exactly what the
13 scheme was about. He knew the hackers were stealing press
14 releases. And he knew he was trading on stolen press
15 releases. He chose to be a part of the scheme and he made
16 millions as a result.

17 You know this for a period, but I just want to
18 remind you, because it's a lot of evidence. Korchevsky used a
19 prepaid phone, like the 9518 phone, with the Atlanta area code
20 and we saw. And Igor purchased those phones for him. That
21 phone was exclusive to communicate with Igor, Arkadiy and
22 Pavel.

23 If there were computers that were used for the
24 illegal trading and he deleted emails and text messages. He
25 used code to communicate with his coconspirators. You saw

Summation - Mr. Nestor

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1 that from the Rupion and Loscal period. And he had access to
2 the Rupion email account -- I'm sorry, he had access to Loscal
3 and Rupion email accounts during this period of time. You saw
4 that little sheet of paper with Loscal credentials being sent
5 to him exactly when Loscal was up and running. And that's
6 just some of the evidence of Korchevsky's knowledge.

7 Now, before I talk to you about the Khalupsky email,
8 I just want to remind you about a few similarities between
9 Korchevsky and Khalupsky.

10 You learned that Korchevsky -- you learned that just
11 like Korchevsky, Khalupsky had a long history of tickers. And
12 he had passed a number of exams. He was registered with FINRA
13 at one point. You learned that Korchevsky was, too.

14 Like Korchevsky, Khalupsky made about 10 to
15 12 percent of the profits in the illegal trading. And you
16 already saw that like Korchevsky, Khalupsky received
17 credentials asking for stolen press releases. Like
18 Korchevsky, Khalupsky received access to email accounts that
19 have stolen information such as Stargate11, which you saw a
20 short while ago. And like Korchevsky, Khalupsky communicated
21 directly with Pavel Dubovoy, who worked directly with Roma and
22 the hackers. And that as we will cover in a few minutes, like
23 Korchevsky, Khalupsky made a lot of money in this scheme.

24 So, ladies and gentlemen, what else do you see
25 during this trial that establishes beyond a reasonable that

Summation - Mr. Nestor

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1 Khalupsky knew the nature of the scheme to trade on stolen
2 press releases and agreed to participate in that scheme.

3 Again, just to give you a few highlights upfront.
4 Khalupsky had the pre-distribution Oracle press release in his
5 email account. That is damning evidence of his knowledge
6 regarding the hacking you've seen in this case.

7 Khalupsky told law enforcement that he knew the
8 hackers. Khalupsky worked to disguise the payments he
9 received for this scheme by having the Dubovoy send the
10 payments to the shell companies. They were sent to Dolphin
11 Trading. Khalupsky sent and received numerous emails
12 confirming his participation in the scheme.

13 First and foremost, you know that after Khalupsky
14 was arrested, he told the FBI, while waiting to be arraigned
15 right here in the Eastern District of New York that he knew
16 the hackers involved in the case and that they were still
17 active. He said they were stealing press releases and trading
18 from them. That's an important link that provides additional
19 context to the emails sent between Pludovsky and Positive 1
20 for Roma.

21 You also learned that after Khalupsky had been
22 trading in Arkadiy Dubovoy's brokerage account for sometime in
23 the illegal information, Arkadiy asked if he can draw up an
24 agreement that Arkadiy signed. That's in evidence at
25 Government Exhibit 805.

Summation - Mr. Nestor

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1 Arkadiy wanted this agreement because Khalupsky was
2 purchasing stock from the Ukraine and the brokerage firm
3 started blocking the account. And he wanted to have a letter
4 ready to go so he could show the document to the bank.

5 He testified that he kept this agreement in his
6 office at all times in case he needed it. This agreement
7 makes clear that Arkadiy Dubovoy was giving Khalupsky
8 permission, Khalupsky permission, to trade in his brokerage
9 accounts. Khalupsky likely forwarded the attached to
10 (inaudible).

11 Now we can't be sure this letter was dated
12 August 2012 or changed to an 8/2012, but Arkadiy Dubovoy
13 testified that the agreement was signed by Khalupsky and it
14 was actually signed -- Khalupsky prepared it and Arkadiy
15 Dubovoy signed it after Khalupsky started trading. So that
16 confirms some time frame for you because you know he started
17 trading in 2011.

18 The agreement language is similar to the trading
19 authorization we've seen from some of the brokerage accounts.
20 It appears Khalupsky used canned language from some of the
21 brokerage trading authorization. And that makes sense.
22 Khalupsky is a trader with a company called Dolphin Trading,
23 right, which he used a form that he's used in the past to
24 draft up this agreement.

25 But it is significant that Khalupsky knew after this

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1 agreement was signed, this agreement was signed sometime in
2 2011. In 2012, as you'll see in a minute, he didn't have
3 trading authorization in Arkadiy Dubovoy's accounts. So this,
4 I submit to you, was the purpose of this document. The
5 purpose of this document, as Arkadiy Dubovoy says, it was in
6 case the brokerages come knocking and they need some form of
7 proof that somebody from the Ukraine is trading in Arkadiy
8 Dubovoy's accounts. So they don't close down the accounts.

9 There's only one person on the other end of this
10 agreement, and it's the defendant Vladislav Khalupsky. He was
11 the person Arkadiy Dubovoy trusted. He was the one Arkadiy
12 Dubovoy was dealing with. And he was the one that knew about
13 the stolen information, Loscal Khalupsky.

14 Now you know that Khalupsky was aware that he didn't
15 have trading authorization in Arkadiy Dubovoy's account after
16 the side agreement, right? Now, this, you've all seen this
17 before, this is Government Exhibit 246(T) and 256(T).

18 Now, you know that these are questions many of us
19 get. We have to fill out questions when we forget our
20 passwords. They're ways to access accounts.

21 Sometime the password is not enough and you can
22 extra security because you're accessing a US-based account
23 from the Ukraine, for instance.

24 Now you know that Khalupsky didn't trade in the same
25 account as Korchevsky. We learned that during this trial.

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1 Arkadiy Dubovoy opened up separate accounts for Khalupsky to
2 trade in. These two emails show that in February 2012 and
3 May 2012, Pavel forwarded account access information for
4 Arkadiy Dubovoy to Khalupsky.

5 And it makes sense that Pavel is sending the
6 information because Arkadiy only knows Khalupsky through Pavel
7 and he became close to Pavel. Pavel is in the Ukraine,
8 Khalupsky is in the Ukraine.

9 And you know who else received this login
10 information for Arkadiy Dubovoy's accounts? Very similar
11 questions, very similar answers. Positive 1. Roma. The
12 intermediary between the hackers and the Dubovoy's.

13 And you know why Roma is getting these account
14 information from Pavel, he's providing the hackers with the
15 access to Dubovoy's accounts, right? But they're charging
16 Arkadiy Dubovoy a percentage of what he was making.

17 You also saw, more than once, that Igor Dubovoy
18 needed to change the settings of one the brokerage accounts
19 that Khalupsky was trading in so that Khalupsky could trade a
20 specific time in a specific manner. Remember, Khalupsky was
21 in the Ukraine to do trading at off hours in the US market.
22 In this email, Khalupsky's asking that the Dubovoy's allow him
23 and his traders to trade in the Merrill Lynch 9078 account,
24 the one with that IP access for and extended hours.

25 And I just want to highlight to two other emails

Summation - Mr. Nestor

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1 you've seen during this trial. First, this is Government
2 Exhibit 222(T). This email is from bilbrown599@gmail.com. It
3 was sent on October 12th, 2011. You saw gmail records in
4 Government Exhibit 852 showing this account was created just a
5 few days before this email was sent using an IP that was comes
6 back Khalupsky's company, Dolphin Trading.

7 In this email, Bill Brown complains to Pavel that
8 seven companies reported press releases after market closed,
9 and another five after market opened, and they didn't get the
10 information about those companies. Bill Brown tells
11 Khalupsky -- I'm sorry, Bill Brown tells Pavel at the bottom
12 of this email that Vladislav, who you know is Khalupsky, wants
13 to provide Pavel with a list of reporting schedule of
14 companies before the end of the week in the case of
15 (inaudible).

16 And Bill Brown attached a list of companies and
17 tickers to this email, along with revenues sticker for next
18 week. He's attaching a list of what he is expecting to come
19 in case that would help the hackers actually get the
20 information.

21 It's clear from this email that Khalupsky's upset.
22 They missed getting a bunch of press releases prior to them
23 going public. That's what they mean we didn't get the
24 information.

25 (Continued on next page.)

*Summation - Ms. Nestor***3040**

1 (In open court.)

2 MS. NESTOR: You saw that Pavel Dubovoy sent the
3 text of the same Bill Brown e-mail along with the attachments
4 to Positive 1, again, that's Roma, the intermediary between
5 the hackers and the Dubovoy. And it's clear why he's doing
6 that, Pavel needs to go through the Roma, the intermediary, to
7 send information from Khalupsky to the hackers. This is yet
8 another direct link between Khalupsky and the hackers just
9 like the passwords that we saw going from Positive 1 to Pavel
10 to Khalupsky. This e-mail is in the reverse. It's sent from
11 Khalupsky to Pavel from Khalupsky's people to Pavel and it
12 goes to Roma. These are Government Exhibits 223-T and 222-T.

13 So as I said, just like the Korchevsky, Khalupsky
14 received a percentage of the profits from his illegal trading.
15 But for the most part it ranged from 10 to 12 percent. You
16 learned that Igor Dubovoy would wire money to Khalupsky at
17 Arkadiy Dubovoy's direction to pay him for the illegal
18 trading.

19 One of the companies he wired money to was
20 Carese Trade & Invest which was Khalupsky's company, or least
21 that's where he was getting payments. You saw a lot of those
22 wire transfers during this trial. This is just one example
23 where Khalupsky asked for 70K, 70,000. You saw that you
24 Carese was located in the British Virgin Islands and had its
25 bank account in Cypress. You should ask yourselves, why isn't

Summation - Ms. Nestor**3041**

1 Khalupsky using Dolphin Trading bank account to receive these
2 payments? Why is he having these payments sent to another
3 entity located in the British Virgin Islands. I think you
4 know, this is payment for illegal work and he doesn't want
5 those payments going to Dolphin.

6 And you saw Khalupsky directing payments to other
7 companies as well such as Rally, Ltd. located in Belize City,
8 Belize using a bank in St. Vicent and the Grenadines. This is
9 a request from Khalupsky to Arkadiy Dubovoy. Dubovoy01 is
10 Arkadiy Dubovoy, Dubovoy1 is Igor Dubovoy, and this is
11 Government Exhibit 310.

12 You learned that Khalupsky would send Arkadiy
13 Dubovoy regular requests for payment and you saw a number of
14 those requests during this trial. And sometimes the requests
15 were sent for someone else to Khalupsky and then forwarded
16 along.

17 And you also learned that Khalupsky was trading more
18 than one account because his payment request indicated he was
19 making a certain amount of money in the large account and a
20 certain amount of money in the smaller account. Those
21 requests indicated he was getting 10 to 12 percent of the cost
22 on the profits from the trading just like Korchevsky. That's
23 241-T and 257-T.

24 And you saw more than just wire transfer payments to
25 Khalupsky for his illegal trading. You also saw accounting

Summation - Ms. Nestor

3042

1 records between Pavel and Arkadiy Dubovoy. This e-mail show a
2 160,000 payment for -- a record of 160,000 payment being made
3 to Carese. And you know that's telling because the Carese
4 payment is right next to the Trudeau Solutions, LLP. You may
5 not remember now Trudeau Solution, LLP is an entity that the
6 hackers were paid out of.

7 Government Exhibit 229, which is in evidence, shows
8 you the hackers Warning GP is referencing this same account,
9 Trudeau Solutions, LLP. And "the guys" you were told refers
10 to *petsani* which is the hackers. So that's in Government's
11 Exhibit 244-T. And Government's Exhibit 229 shows you
12 Warning GP and the Trudeau Solutions, LLP company.

13 And Arkadiy Dubovoy wrote down times he paid
14 Khalupsky and the hackers in the accounts he prepared for
15 himself. Now, this document has a number of pages it to and
16 there were numerous payments to Khalupsky in it as well as
17 payments to the hackers. And there's even a payment to
18 Korchevsky for \$180,000 from these notes. Arkadiy Dubovoy
19 told you these notes what these notes were. These were an
20 accounting to the defendants of the expenses during the
21 timeframe of this conspiracy. It wasn't for the entire
22 timeframe, it was some portion of it. He's paying the
23 hackers, Khalupsky and Korchevsky, for their work in
24 furthering this scheme.

25 What's important about these notes is at the time he

Summation - Ms. Nestor

3043

1 wrote these notes, he had no idea he was going to be arrested
2 for this crime. This is corroboration or confirmation for
3 Arkadiy Dubovoy. He didn't know his notes were going to be on
4 display in court.

5 You heard from a forensic accountant, Mr. Levanti.
6 He testified about all the payments that went to
7 Mr. Khalupsky. There was about this \$700,000 worth of
8 payments one was to SK Intertrading another company other than
9 Carese.

10 Now, this is from February 2012 to June 2013. We do
11 know that Arkadiy Dubovoy and Khalupsky had a legitimate
12 business agreement for \$200,000 for the company, right? He
13 had offered \$200,000, he paid him the \$200,000, the deal fell
14 apart.

15 Now, I want to talk to you about Khalupsky's setting
16 up the Oracle press release. This is Government Exhibit 323,
17 the e-mail itself and 323-A1.

18 THE COURT: Would this be an appropriate time?

19 MS. NESTOR: Yes, Your Honor.

20 THE COURT: All right. I thought so.

21 We'll take a short break, folks. Don't discuss the
22 case.

23 Ten-minute break.

24 (Jury exits courtroom at 10:44 a.m.)

25 THE COURT: Where are we, Ms. Nestor, in your

Summation - Ms. Nestor

3044

1 presentation?

2 MS. NESTOR: I'm doing well. I think another -- I
3 have a hard time predicting these things -- but less than an
4 hour.

5 THE COURT: Less than an hour?

6 MS. NESTOR: Yes.

7 THE COURT: I'm trying to figure the jury's lunch.
8 All right. 10 minutes, folks.

9 (A recess in the proceedings was taken.)

10 THE COURT: We'll take our lunch after Ms. Nestor
11 finishes. 45 minutes.

12 MS. NESTOR: Your Honor, I know you had indicated
13 that you do not want the law discussed in summations. I was
14 going to briefly discuss the charges and apply facts to them
15 at the end of my summation.

16 THE COURT: That's no problem.

17 MS. NESTOR: Okay.

18 THE COURT: The use of the word "facsimile" is in
19 the charge. We didn't have any evidence of facsimiles, did
20 we?

21 MR. TUCKER: We did not, your Honor.

22 THE COURT: We did have evidence of text messages?

23 MR. TUCKER: We did, your Honor.

24 THE COURT: All right.

25 COURTROOM DEPUTY: All rise.

Summation - Ms. Nestor

3045

1 (Jury enters courtroom at 11:00 a.m.)

2 THE COURT: Okay, everyone. Please be seated.

3 Ms. Nestor when you're ready.

4 MS. NESTOR: Thank you, your Honor.

5 When we left off, we were talking about evidence of
6 Khalupsky's knowledge of this scheme.

7 And I want to point you to this stolen Oracle press
8 release. Government Exhibit 323 is the e-mail where
9 vladislavkhalupsky@gmail.com sends this attached press release
10 323-A1 vladislavkhalupsky@yahoo.com, an e-mail sent on
11 December 1, 2013.

12 Now, there are a number of these e-mails, seven
13 total, that are sent right around the same time. They're all
14 different portions of the same Oracle press release from that
15 day. You know this is a pre-distribution meeting prior to it
16 becoming a public press release. At 1:22 p.m. is the first
17 one that's sent. At 1:55 p.m. on December 18, 2013, is the
18 last one that's sent. Seven total. The timestamps are at the
19 top where the e-mails are. It says 1:52 p.m. on this one it's
20 sent, right in the middle.

21 You also know the e-mails were sent from a device
22 using the same Odessa, Ukraine IP associated with Dolphin that
23 we've seen a number of times during this trial.

24 So, again, Khalupsky sends an e-mail
25 from -- e-mails -- from himself to himself with draft Oracle

*Summation - Ms. Nestor***3046**

1 press releases. Snapshots of different portions of the draft
2 Oracle press release and that's pictured right here. Here are
3 two of the other photos of the Oracle press release. These
4 are just two more examples, there are others that you can ask
5 for. This is Government Exhibits 323, 323-A1, and the entire
6 series of 364. So seven e-mails total that he sends to
7 himself.

8 You know the photos of the press release you saw in
9 Khalupsky's e-mail was pre-distribution for a number of
10 reasons. First, because of the timing when it was sent. The
11 final Oracle press releases issued to the public at 4:04 p.m.
12 on December 18th. That was after Khalupsky sent the
13 photographs of portions of the pre-distribution press releases
14 to himself. The final press release in evidence is
15 Government's Exhibit 802-1.

16 Second. You learned this was a Market Wire press
17 release, and the Market Wire representative who testified told
18 you that the Oracle press release that Khalupsky sent to
19 himself looked like it was pre-distribution because it looked
20 like it was draft form. You looked at, actually, one of the
21 photographs of the press release and saw special characters in
22 it that's how he felt -- it looked like it was in draft form.

23 This is really damning evidence that Khalupsky had
24 access to press releases prior to them being out in the
25 public. This is damning evidence that he had knowledge of

Summation - Ms. Nestor

3047

1 this scheme.

2 So you know that Khalupsky was a knowing participant
3 in the scheme because, again, you've seen him in possession of
4 pre-distribution press releases when he was arrested. He
5 tells law enforcement that he knows the hackers using a shell
6 company such as Carese to disguise payments and all the
7 e-mails that you've seen for Khalupsky's clearly involved in
8 the trading scheme. He's clearly connected to these hackers
9 by e-mail, not just by his words.

10 And, of course, you know he's know he's involved in
11 the scheme because the cooperators also told you that, and
12 what they told you is confirmed through e-mail and it's
13 confirmed through the documents you've seen during this trial.
14 Confirmed through these seven draft Oracle press releases that
15 he sends to himself.

16 All right. So now the last thing we have to do is
17 tie all this evidence together for you. I'm not going to
18 repeat everything that I've already said, but I'm going to go
19 through and I'm going to explain to you how all this evidence
20 falls into the legal scheme which you're going to have to
21 consider when you go back into the deliberation room.

22 As the judge instructed, he is the person that is
23 going to instruct you on the law. Everything I say is
24 argument, and to the extent it's trying, again, to fit the
25 puzzle together for you.

*Summation - Ms. Nestor***3048**

1 Now, as I said at the beginning, the defendants here
2 are charged with four conspiracies. I will explain the object
3 of those conspiracies in a moment, but first, I'm going to
4 explain to you what a conspiracy actually is.

5 A conspiracy is simply an agreement between two or
6 more people to violate the law. The first element of a
7 conspiracy is the defendants have to actually come to a mutual
8 understanding.

9 So, for instance, a conspiracy existed to violate
10 the wire fraud statute. They had to come to a mutual
11 understanding that wire fraud existed, that there was a crime
12 of wire fraud. And that's what the object of the conspiracy
13 is, that's the object of the agreement -- to commit wire
14 fraud. I will get into all of the objects in a moment.
15 Defendants have to actually willfully and knowingly join that
16 conspiracy.

17 For securities fraud there's one additional element
18 that you have to find for a conspiracy charge, and that's if
19 the defendants and one of their co-conspirators had to
20 actually act in furtherance. It had to do with one of the
21 objects charged in the indictment in furtherance of the
22 conspiracy and we'll get into that in a moment.

23 The indictment in this case, as I said, it has three
24 different conspiracies, but it's really four different charges
25 to the conspiracy.

Summation - Ms. Nestor

3049

1 There's wire fraud, that's Count One.

2 Securities fraud and computer intrusion, that's
3 Count Two. Securities fraud or computer intrusion.

4 And there's money laundering, that's Count Five.

5 There are also two substantive securities fraud
6 counts which I'll get to in a moment.

7 Let's talk about wire fraud briefly first.

8 To find the defendants guilty of wire fraud
9 conspiracy, not substantive wire fraud but wire fraud
10 conspiracy, you need to find that they agreed to make money or
11 take money or property by false or fraudulent pretenses. In
12 other words, they had to use deceit in order to take money or
13 property. Here, the victims of this crime are the three news
14 wires and the companies press releases are stolen.

15 (Continued on the next page.)

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Summations of Ms. Nestor

3050

1 MS. NESTOR: Also remember conspiracy is just an
2 agreement to commit a crime. There is no requirement that a
3 conspiracy actually succeed. It is enough there is an
4 agreement to commit the crime, you don't have to find the
5 conspiracy succeeded in wire fraud. It's clear from the
6 evidence here the defendants and the co-conspirators did in
7 fact succeed in committing wire fraud.

8 You heard evidence of a scheme to defraud. You
9 heard during this trial that PR Newswire, Marketwired and
10 Business Wire were hacked. You also know that the hackers
11 stole press releases, meaning they stole the property of the
12 news wires and the companies that provided the news wires to
13 the press releases.

14 As I said at the beginning, the scheme to deceive
15 here was that the hackers used stolen usernames and passwords
16 to trick the news wire computers to let the hackers inside.
17 Once the hackers had access, the hackers took thousands of
18 press releases before those releases were released to the
19 general public.

20 Special Agent Shahrani told that you when he
21 searched the computers seized in the Ukraine, 4A and 6B. He
22 said that one of them had the one GP e-mail on it, you saw
23 chats from those computers, right. That showed you that for a
24 short while there was hacking on, there was evidence of
25 hacking on both of those computers. Now those computers don't

Summations of Ms. Nestor

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1 take you past 2012, but they take you up to 2012 and show you
2 those individuals were hacking all three news wires.

3 One of those computers, 4A, was devoted, had folders
4 devoted to Business Wire, Marketwired and PR Newswire. Those
5 folders contain administrative credentials, employee user
6 passwords for all three news wires. 6B also contained stolen
7 press releases.

8 PR Newswire and Marketwired hired forensic examiners
9 to investigate those. You learned that PR Newswire
10 investigators saw credentials had been stolen from PR Newswire
11 employees and sent to the Ukraine. The hackers tried to cover
12 their trail by deleting logs of their activity, but sometimes
13 the logs failed to delete and investigators found records of
14 press releases that the hackers had stolen, still records in
15 the temporary files.

16 You also learned that PR Newswire detected some
17 spearfishing used as part of the hacks. And a Marketwired
18 forensic examiner testified that a forensic review of
19 Marketwired server logs showed the hackers used stolen login
20 credentials as well.

21 Business Wire determined a number of periods in
22 2014/2015 where their system was targeted with malicious cyber
23 activity, and they determined user credentials was used by the
24 hackers. Business Wire told you the attacker was coming from
25 eastern Europe. But even Business Wire, who hired a

Summations of Ms. Nestor

3052

1 specialized firm to look into the hacking, didn't know the
2 press releases were stolen from their system until the
3 Government provided them the draft press releases they
4 provided them with the press releases that was in the Rupion
5 account.

6 Based on the testimony during this trial you know
7 that the hackers regularly targeted the news wires. You know
8 it from the computers that were seized and the news wires
9 themselves, they were able to gain access at many different
10 points.

11 The PR Newswire examiner determined evidence of
12 compromise from April of 2010 up to March 2012 when he was
13 actually brought on and he saw hackers accessing the PR
14 Newswire system, as well as 2013 when he was brought back on.
15 He saw the spearfishing e-mails. He saw the hackers were
16 trying to elevate their staff.

17 The Marketwired forensic examiner hired by
18 Marketwired looked into the intrusion as well and found
19 malicious activity on Marketwired systems from February 2010
20 on and off until about July 2014 or sometime in 2014, when he
21 arrived.

22 Again, Business Wire determined that there were a
23 number of periods in 2014 and 2015 where their systems had
24 been the target of malicious cyber activity. You saw there
25 were actually press releases in the Rupion account, Business

1 Wire press releases.

2 The next thing you have to find in conspiracy to
3 commit wire fraud, is that defendants entered into a
4 conspiracy with the intent and knowledge of objects of the
5 conspiracy. How do you know the defendants had the
6 understanding of the wire fraud scheme here when they agreed
7 to be part of this conspiracy? Both defendants knew that this
8 scheme had to be covert so they could maintain the press
9 releases, right. They needed access to press releases. The
10 hackers had to be covert in what they do.

11 Now I want to be clear, the defendants did not have
12 to know the precise methods of how the hackers deceived the
13 news wires, they just had to know the deception was going to
14 be used to carry out the fraudulent scheme. That's evident
15 from the evidence you have seen during this trial. In fact,
16 this entire scheme is about deception not just hacks of the
17 news wires.

18 Both defendants and their co-conspirators used
19 deception during the scheme. Korchevsky used prepaid phones,
20 deletes e-mails, destroys computers in order to commit his
21 crimes. Both Korchevsky and Khalupsky accessed the stolen
22 press releases via a server masking their IPs. Khalupsky
23 deletes e-mails as part of this scheme in order to conceal the
24 fact that he's in possession of stolen press releases, right,
25 that's the Oracle press releases.

Summations of Ms. Nestor

3054

1 You also know that Korchevsky knowingly and
2 intentionally agreed to participate in the scheme for a number
3 of reasons. We talked about a bunch of these already, these
4 are just some examples so you can tie it to the law.

5 You saw e-mails in this case that show you that
6 Korchevsky received stolen credentials sent from the hackers
7 to access stolen press releases. You actually saw the server
8 that Korchevsky was accessing to get the stolen press
9 releases. And you also saw that Korchevsky was kept in the
10 loop about how the negotiations of hackers were going.

11 You know that a number of electronic devices were
12 seized from Korchevsky at the time of his arrest. You see
13 those devices also include evidence of him accessing the
14 stolen press releases. You saw the iPads of Korchevsky with
15 the Stargate11 e-mail on it. The 9518 phone, the phone with
16 the note on it, seized from Korchevsky at the time of his
17 arrest in his bedroom. The phone was used solely to
18 communicate with co-conspirators. The phone had all but one
19 text message that was deleted when it was recovered.

20 Now, you saw text messages of Korchevsky, you saw a
21 lot of those. You saw text messages between Korchevsky
22 between and Igor Dubovoy, and some with Arkadiy Dubovoy. Igor
23 and Korchevsky used codes to talk to each other. And you know
24 why, so law enforcement wouldn't understand it. Arkadiy
25 testified that he and Korchevsky would not speak in detail on

Summations of Ms. Nestor

3055

1 the phone at all, that was because he knew it was illegal and
2 so did Korchevsky.

3 Cooperator testimony that Korchevsky 100 percent
4 knew he was involved in this scheme to defraud is important.
5 It's part of this case. There is a meeting at the airport.
6 Garkusha described Korchevsky reviewing the press releases,
7 licking his finger, going one by one, reviewing the press
8 releases. And Garkusha recalled Arkadiy actually explained
9 during that time that this was, what the scheme was, it was
10 actually breaking in and stealing press releases.

11 Arkadiy told you that he and Korchevsky actually
12 discussed the stolen press releases and the hackers during the
13 scheme. Igor remembered Korchevsky coaching him and his
14 father what to do if they were approached by the authorities.
15 Korchevsky said, deny knowing anything, according to Igor
16 Dubovoy.

17 Now that's all evidence of knowledge. That's all
18 evidence of knowledge and that's all evidence of being a
19 participant in the conspiracy to commit wire fraud. How do
20 you know of that Khalupsky knowingly participated in this
21 conspiracy as well?

22 Talking about wire fraud. You know Khalupsky was
23 communicating directly with Positive 1, Roma, we discussed
24 that, who had direct communications with the hackers in the
25 scheme. Similar to Korchevsky, Khalupsky was accessing that

Summations of Ms. Nestor

3056

1 Stargate e-mail account, he had those credentials. You saw
2 that Khalupsky took several photos of the Oracle press
3 release, pre-distribution press release. What's more, he was
4 opening the oracle press release in the zip file, the same way
5 the press releases were extricated from the server, you saw
6 the video of.

7 You know that law enforcement agents when they
8 first, when he was first arrested and presented in court, that
9 he told law enforcement agents that he knew the hackers. They
10 were still stealing press releases.

11 You didn't see the evidence against Khalupsky in a
12 vacuum, you heard what Arkadiy and Igor Dubovoy had to say at
13 trial. Arkadiy Dubovoy also said the entire reason Pavel
14 introduced him to Khalupsky to have someone other than
15 Korchevsky trade on stolen press releases. That was the
16 premise for Arkadiy's relationship with Khalupsky.

17 Arkadiy told he paid Khalupsky to have him and his
18 traders at Dolphin trade on the stolen information. Igor
19 Dubovoy had a similar understanding.

20 There is also a requirement for conspiracy to commit
21 wire fraud that the objects, the wire fraud, that the
22 defendants intent to use interstate wires. You don't actually
23 have to find that interstate wires were found. It's a
24 conspiracy, the Judge will instruct you.

25 We showed you there are e-mails being sent around.

Summations of Ms. Nestor

3057

1 There are payments being sent around by wire. You know there
2 are wires being used in furtherance of the conspiracy here.

3 The last thing you have to find is venue. You're
4 going to hear me say venue a number of times. Let's talk
5 about it now and then hopefully it will apply to most of the
6 others. Venue is not proof beyond a reasonable doubt. Venue
7 is just more likely than not. You have to find more likely
8 than not that the agreement was formed or that an overt act in
9 furtherance of the conspiracy was committed in the Eastern
10 District of New York. So venue is just where there is an
11 overt act committed in furtherance of the conspiracy.

12 Korchevsky transferred \$2.

13 (Continued on the next page.)
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Summations of Ms. Nestor

3058

1 MS. NESTOR: And given the thousands of trades
2 that we conducted in this cases, it was certainly
3 foreseeable the two defendants were professional traders,
4 that they would use the DTCC, a common clearing firm.

5 The last charge is money laundering, conspiracy to
6 commit money laundering. There are two different types of
7 money laundering. One's called promotional money laundering
8 and the other is called concealment. The idea here is that
9 the defendants have to be found to have agreed to transport
10 money, whether by wire or otherwise, outside of the
11 United States, and that they did this intending that the
12 money be used to promote illegal activity or to conceal the
13 nature of the illegal activity. You can find one or the
14 other. Okay? And you know that happened. You saw multiple
15 references in payment to hackers during this case in emails.
16 And you also have wire transfers at that Trudeau Solutions,
17 we talked about that. That's the company that the hackers
18 used. You saw references to that in e-mails, and you see it
19 right here. And I think everyone can agree that without
20 payment to hackers, there would be no securities fraud or
21 wire fraud, right? And wire fraud and securities fraud you
22 have to find that the money laundering is done in
23 furtherance of the wire fraud and securities fraud.

24 Now, as to the concealment part, you know that
25 payments are concealed because Khalupsky doesn't get paid at

Summations of Ms. Nestor

3059

1 Dolphin, he gets paid at Carese, right?

2 And also lastly, you also need to find venue for
3 this count and venue's sustained for this count and the
4 other one that we've been talking about.

5 Ladies and gentlemen, I have now gone through the
6 evidence with you, and I submit that the Government has
7 established beyond a reasonable doubt that these defendants
8 stole and they cheated. They're part of a criminal
9 conspiracy to deceive the newswires, and the company's
10 press releases were stolen. The deception permeates this
11 scheme and the defendants are part of it all. They were
12 trading on stolen press releases and made millions of
13 dollars. They saw an opportunity to make easy money and
14 they took it. Their deception lasted years and they
15 perfected their method as they went along.

16 The evidence presented to you proves beyond a
17 reasonable doubt that the defendants are guilty of the
18 crimes that they've been charged with. Now, we want to
19 thank you for your time here, because you paid attention.
20 You paid attention to this case, and we really appreciate
21 it.

22 After both Defendants finish their summation, we
23 will have an opportunity to speak to you again. At that
24 time, we'll ask you to return the same verdict that is
25 supported by the evidence and by your common sense,

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1 defendants are guilty on all counts.

2 Thank you.

3 THE COURT: All right. I think it is a logical
4 point, although a little early, but we have lunch coming.
5 It is a logical point to break before we hear from Defense.
6 So we will do that. And, again, I am urging you to do not
7 have any discussion among yourselves about the case or
8 anything that you have heard. And we will resume in 45
9 minutes at 12:20.

10 Enjoy your lunch.

11 THE COURTROOM DEPUTY: All rise.

12 (Jury exits the courtroom.)

13 (The following matters occurred outside the
14 presence of the jury.)

15 (Lunch recess taken.)

16 (Continued on the next page.)

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Proceedings

3061

1 A F T E R N O O N P O R T I O N

2 --o000o--

3 (In open court; jury not present.)

4 THE COURT: Okay.

5 (Short pause.)

6 THE COURTROOM DEPUTY: All rise.

7 (Jury enters.)

8 THE COURT: All right. Please be seated,
9 everyone.

10 Mr. Brill?

11 MR. BRILL: Thank you, Your Honor.

12 Good afternoon.

13 The prosecutor just stood up here for almost three

14 hours and not one mention of their star witnesses'

15 testimony, Arkadiy Dubovoy and Igor Dubovoy. Not one

16 mention of what you all observed in this courtroom. The

17 lies, the deceit, the deception. Ignored. Not mentioned.

18 Why? Why? They know, ladies and gentlemen, that it's Igor

19 and Arkadiy who hold their case together; they are the glue

20 to their case. I mean, it's Arkadiy, ladies and gentlemen,

21 who tells you about this meeting, this so-called meeting in

22 the Atlanta airport with Vitaly Korchevsky and Garkusha.

23 And it's Igor who tells you all about these devices and

24 texts and e-mails, websites. They are the ones that

25 describe this scheme for you, so if they are unreliable, if

Proceedings

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1 they are dishonest, then their case falls. Without them,
2 there's no way for the government to prove their case beyond
3 a reasonable doubt, ignored, and that's because the
4 prosecutors know how unreliable they are. And that's
5 because the prosecutors know how dishonest they are. The
6 prosecutors did not mention the testimony that you heard,
7 but later in my summation, you bet that I will.

8 So, almost four weeks now, ladies and gentlemen, I
9 stood right here and gave you my opening statement, and I
10 told you that you are about to sit through a trial where the
11 government would present to you giant binders which contain
12 tens of thousands of pages; thousands of documents; more
13 than 30 witnesses; hundreds, thousands of exhibits;
14 spreadsheets, charts; diagrams; devices; e-mails. I told
15 you that's what you will see. And just like I said way back
16 when we started, out of all of that, here's what you won't
17 see: You'll never see in any of those things a single
18 stolen press release that was possessed by Vitaly
19 Korchevsky. And that statement came true, ladies and
20 gentlemen. Not one. Four years of that alleged conspiracy
21 from 2011 to 2015, and there's not one stolen press release
22 in Vitaly Korchevsky's possession for them to show you. A
23 thousand trades were done, supposedly, on these stolen press
24 releases. Not one. I'm sure the best agents in the
25 business, the Secret Service, the FBI, unable to provide to

Proceedings

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1 you an actual press release that was possessed by Vitaly
2 Korchevsky. Out of all the people that testified before
3 you, not one came to tell you that they saw Vitaly
4 Korchevsky in possession of a stolen press release. And I
5 told you more, ladies and gentlemen, when we spoke or when I
6 spoke four weeks ago. I told you that you wouldn't see
7 evidence that shows that Vitaly actually accessed an actual
8 press release or that there were any press releases, stolen
9 press releases, on any of his devices. And you saw a couple
10 of links, you saw e-mail addresses, you saw passwords, and,
11 yes, some made their way to Vitaly Korchevsky, but the
12 government has never shown you evidence that Vitaly
13 Korchevsky ever accessed these things in order to possess
14 the stolen press release. No evidence, ladies and
15 gentlemen, of any stolen press release accessed by Vitaly
16 Korchevsky on any of his computers, his phones, on his iPads
17 or any of his other devices that were shown to you. And
18 this is the stolen press release, ladies and gentlemen.
19 This is the thrust of the government's case, the heart of
20 the case, the basis of this entire supposed conspiracy, the
21 entire crime, the accusation that Mr. Korchevsky possessed
22 and accessed stolen press releases and traded on them
23 knowingly, but they have given you no evidence of it except
24 the word of men who lie and men who cheat, like the
25 Dubovoys.

1 On top of that, ladies and gentlemen, I told you
2 that out of all the texts, out of all the e-mails and the
3 communications that were presented in this case, you will
4 not see any evidence that Vitaly Korchevsky communicated
5 with any of the hackers, visited with any of the hackers,
6 met with any of the hackers, negotiated with any of the
7 hackers, or ever paid or transferred any money to a hacker,
8 and that turned out to be true as well.

9 We saw loads of devices, we saw lots of evidence
10 of hacks, but we saw no connection between Vitaly Korchevsky
11 directly with the hacks. We saw e-mails from hackers like
12 Warning GP and Positive 1 and we heard about Alex and Ivan,
13 but you saw no connection between those individuals and
14 Vitaly Korchevsky. We saw access, evidence of access, by
15 these hackers to the Dubovoys brokerage accounts and bank
16 accounts. They never accessed Vitaly Korchevsky's accounts,
17 and you saw all of them. We saw IP address after IP address
18 presented to you, charts, spreadsheets, but no connection
19 between Vitaly Korchevsky and the hackers. There is just no
20 evidence, ladies and gentlemen, that Vitaly Korchevsky had
21 anything to do with these guys. And like the press
22 releases, the hackers are the thrust of the case, yet
23 there's no evidence that connects them.

24 I also told you something else when I spoke to
25 you. I told you that this case would be about two kinds of

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1 men, the kind of men like Arkadiy and Igor Dubovoy who lie
2 when they can, who cheat when they can, who steal when they
3 can, who are arrogant and selfish and who care little for
4 anyone else unless it gets them ahead, the kind of men
5 always looking for a scam, always looking for a deal, always
6 looking for a way out, compared to another kind of man, like
7 Vitaly Korchevsky, who, as you heard from the evidence, is a
8 principle man, a religious man, a man who has an effect on
9 his community and his church, a man who is worthy enough for
10 others to take time out of their daily life to travel and
11 come here to tell you what they think of him from as far as
12 the West Coast to do that with nothing to gain but their
13 interest to share with you their opinion and what they know
14 to be Vitaly's reputation, which is as a helper and a giver,
15 one who buys homes for them and sponsors them to come into
16 this company, one who is honest, one who's accountable, one
17 who offers good will, one who's truthful, one who's
18 trustworthy. Completely the opposite from the government's
19 star witnesses. And it should be clear that as a result of
20 Vitaly Korchevsky's good nature, of his willingness to help,
21 of his agreement to share his financial skills and expertise
22 with the Dubovoys, like he did in 2000 and like he did again
23 in the year 2011 with Arkadiy, he is the one that ends up
24 kept in the dark, he is the one that ends up cheated and
25 manipulated, used by the Dubovoys for their selfish gain.

1 He is the one who gets used. He is the one who gets the raw
2 deal. And despite that, despite that fact, the little
3 evidence that they have against him, he's the one that sits
4 before you being prosecuted by the word of liars and
5 cheaters with his future in the bowels facing serious
6 consequences from being accused of serious crimes, really
7 serious, while the hackers are on the loose still hacking,
8 while Pavel is free somewhere in Russia. While Arkadiy gets
9 a deal, while Igor gets a deal, while Garkusha gets a deal,
10 he sits here.

11 Like I said from the beginning, ladies and
12 gentlemen, this is where Mr. Korchevsky's American dream
13 became an utter nightmare, and it's my opportunity now, for
14 the little time we have left, to ask you to end that
15 nightmare, and the way to end it is to find Vitaly
16 Korchevsky not guilty, which is what the evidence that was
17 presented and the lack of evidence that was presented calls
18 for.

19 Before I review the evidence with you, I want to
20 bring up something that I urge you to think about throughout
21 the summations and certainly throughout your deliberations,
22 and it's what I would submit to be maybe the most important
23 aspect of any criminal trial, certainly this one as well,
24 and it's not me, it's not defense lawyers, it's not the
25 government lawyers, it may not even be the defendant, but

1 what it is is the idea that the government has the burden of
2 proof in this case and in any case, not Vitaly Korchevsky.
3 And to meet that burden, as you will hear from the Court,
4 they must prove each and every element of each and every
5 crime beyond a reasonable doubt, and that will be an
6 incredible jury instruction for you to focus on, to rely on,
7 to base your verdict on. And the reason why it is so
8 important is because I know this is not an easy case. I
9 understand what was presented. I understand how certain
10 things appear. I recognize that as human beings, some may
11 be concerned, some may question, some may have -- some may
12 pause and feel that something's not right. Some actually
13 may feel in their gut that Vitaly Korchevsky is guilty, or
14 they have a hunch or maybe they think he did it, but all
15 those things, all those feelings is not good enough. That's
16 not enough for beyond a reasonable doubt, and that's not how
17 you'll hear Judge Dearie define. And I urge you that as you
18 review the evidence and think about it all when you
19 deliberate, that you view the evidence with that burden in
20 mind, and if you do, the only conclusion that you will come
21 to is that Vitaly Korchevsky is not guilty.

22 You know, our system -- trial is not about the
23 quantity of evidence, it's not about who can put on the most
24 witnesses or present the most pieces of evidence or the most
25 spreadsheets or the most slides, the best technology, the

1 biggest binders, it's not who can talk the longest in the
2 summation. It's only about one thing: Did the government
3 prove their case against Vitaly Korchevsky beyond a
4 reasonable doubt? Because there's been plenty of quantity,
5 ladies and gentlemen; witnesses, brokerage accounts, bank
6 accounts, spreadsheets, photographs, e-mails, phone
7 extracts, IP data, P data and charts. But with all of that,
8 they still don't have forensic connection that Vitaly
9 Korchevsky accessed press release. They still don't have
10 evidence that Vitaly Korchevsky knowingly traded on stolen
11 information, and with all of that, they're still relying,
12 although they won't say it during summation, on those who
13 lie and cheat.

14 So there's a couple of aspects of this case that
15 we do not dispute. One of them is that there was a hack.
16 Certainly, no dispute. Servers were compromised during
17 certain parts of the year between 2011 and 2015, and those
18 who did some of that hacking were based in some apartment in
19 the Ukraine -- Alex and Ivan -- and you saw their computers,
20 Warning GP. There's no doubt whether those hacks occurred,
21 and we never disputed it, but that's not what this case is
22 about. What we were trying to demonstrate with our
23 questions about the hack, ladies and gentlemen, was the lack
24 of evidence, the lack of connection between the hacked
25 material in the hands Vitaly Korchevsky and the lack of

1 connection between the hackers themselves and Vitaly
2 Korchevsky and any of his devices. This is where you should
3 focus. This is where you will find reasonable doubt.

4 And here's another thing that's clear, ladies and
5 gentlemen, that this scheme was hatched and masterminded and
6 kept alive by the Dubovoy family, and they kept it all in
7 the family. It was Pavel who first met the hackers in the
8 Ukraine, and then he contacted Arkadiy and brought him into
9 this scheme. And then it was Arkadiy, the father, who had
10 no trouble bringing his son into this criminal scheme. It
11 was the Dubovoys who communicated with the hackers. It was
12 the Dubovoys who answered to the hackers. It was the
13 Dubovoys who negotiated with the hackers. It was the
14 Dubovoys whose accounts were monitored by the hackers, who
15 paid the hackers, who were accountable to the hackers. And
16 then, ladies and gentlemen, it was the Dubovoys who accessed
17 the press release, who got the press releases and shared
18 that information with Momotok and Garkusha. And later it
19 was Igor who set up the Rupion account, not Vitaly
20 Korchevsky. It was Igor who set up the V Marken account,
21 not Vitaly Korchevsky. It was Igor that set up the Loscal
22 account, not Vitaly Korchevsky. It was Igor who received
23 the press releases and then forwarded the press releases to
24 Pavel and Pychnenko and S. Fincks, all the names you heard.
25 He's the one who collected the money, who wired the money,

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1 who ran the scheme, and it was the Dubovoys who controlled
2 the information that came from the hackers, and all of that
3 stuff was kept from Vitaly Korchevsky, and that's because
4 given who Vitaly Korchevsky was, and you heard a lot of
5 evidence about that, they had to keep him in the dark.

6 If you were in the Dubovoys' inner circle, ladies
7 and gentlemen, like Pavel and Pychnenko, Arkadiy's driver,
8 Garkusha, you benefitted. But when you're not, like Vitaly
9 Korchevsky, you get used for your knowledge, for your
10 skills, for your generosity, and you get kept in the dark
11 and you wind up here.

12 So the question, ladies and gentlemen, is not did
13 the hacks happen. They did. The question is not were the
14 Dubovoys responsible for this entire scheme, they obviously
15 were. The question is, within that Dubovoy web, whether
16 there was any evidence that Vitaly Korchevsky had any
17 knowledge of these hacks or had knowledge of what the
18 Dubovoys were doing with these stolen press releases, and
19 that answer, based on this evidence, is no. Ask yourselves,
20 ladies and gentlemen, ask yourselves this question as you
21 think about the evidence and deliberate. Ask yourselves
22 what you would expect to see, what you would want to see if
23 Vitaly did have the knowledge of the stolen press release
24 and did knowingly join a fraudulent trading scheme like
25 this. You would want to see some connection with the

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1 hackers, right? You would want to see some evidence that he
2 actually accessed a press release. You would want to see
3 some evidence of money for the hacking between Vitaly
4 Korchevsky and the hackers, evidence of just one e-mail
5 between the hackers and Vitaly Korchevsky. After all, it
6 was Vitaly Korchevsky that was doing the trading and making
7 these hackers money, supposedly. You would want to see some
8 evidence that Vitaly Korchevsky was actually in possession
9 of just one stolen press release. That's what I would
10 submit you would want to see if you believed Vitaly
11 Korchevsky was involved in such a fraudulent scheme, but
12 you've seen none, because there has been none.

13 You know, the government speaks about money
14 connections and they throw around bank statements and checks
15 and talk about even money laundering charge, and they do it
16 because it sounds sensational. When someone would hear
17 money, it would sound as if there was something sinful going
18 on, but let's talk about the money, ladies and gentlemen.
19 Let's look deeper into the money and let's not take the
20 government's word for it as they place it upon you and want
21 you just to assume that based on certain transactions, or
22 lack of transactions, that that means that Vitaly Korchevsky
23 was involved knowingly.

24 Now, the government entered all of Vitaly
25 Korchevsky's bank accounts, all of his brokerage accounts,

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1 all of his wires, all of his deposits and withdrawals; and
2 after all of those documents had been entered, there's been
3 no money connection between Vitaly Korchevsky and the
4 hackers, no evidence that he paid them, no wires, no
5 transfers, no chain that the money went from Arkadiy Dubovoy
6 to the hackers. The money, ladies and gentlemen, went from
7 Arkadiy and Igor to Pavel to the hackers. Vitaly Korchevsky
8 had nothing to do with it.

9 When thinking about the money, ladies and
10 gentlemen, remember that it's the Dubovoy's that hatched this
11 scheme; it was the Dubovoy's that masterminded it; it was the
12 Dubovoy's that manipulated others, like Vitaly, to help, so
13 they controlled the money. And what's more is that there's
14 really no money connection between Vitaly Korchevsky and the
15 Dubovoy's, which is supposedly something that should be part
16 of this trading scheme. You heard a discussion about the
17 agreement that Vitaly Korchevsky would get 12 percent of
18 what he made for the Dubovoy's in trading. Where is it?
19 Where is the 12 percent of the four years of the millions of
20 dollars that were traded? Yes, you did see a check for
21 \$70,000. That's true. But shouldn't it be \$700,000, couple
22 of million dollars after so many millions were made from
23 this trading and Vitaly Korchevsky is making 12 percent of
24 that? Shouldn't you see that? If the government is going
25 to allege that that was the agreement between Vitaly and the

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1 Dubovoys, don't you want to see proof that indeed Vitaly
2 Korchevsky made 12 percent like they agreed to? I mean, you
3 have been given a check for \$70,000, and then you saw a
4 ledger that Arkadiy says that he drafted but could hardly
5 explain, could hardly remember, didn't know what the
6 breakdown was, and had a hard time putting it in context.

7 So what kind of scheme, at least as far as Vitaly
8 is concerned, is this? Of course there should be a money
9 connection between Vitaly and the Dubovoys, that's what the
10 government's theory is, but you really have not seen it.
11 You know, what you did hear is a forensic accountant come in
12 and very willingly talk about Vitaly Korchevsky and his
13 income and his tax returns. You know for sure that if there
14 was money that was transferred between Vitaly Korchevsky and
15 the Dubovoys as a result of this scheme, that forensic
16 company accountant would have been the first one to tell us.
17 That would have been the first question out of the
18 prosecutor's mouth. But nothing. What is important is that
19 any money that was exchanged between Vitaly Korchevsky and
20 the Dubovoys or transferred between Vitaly Korchevsky's
21 accounts was not concealed, it wasn't disguised, you didn't
22 hear any backroom transfers or cash in a brown bag or
23 payments made in some alley or in some secretive way. I
24 mean, have you seen evidence, any evidence, that there was
25 any attempt to hide any money that Vitaly Korchevsky

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1 transferred, withdrew, deposited, wired? The government was
2 very quick to bring in a JPMorgan employee to tell us about
3 a couple of wires that went from E*TRADE to NTS Capital.
4 E*TRADE being Vitaly's stock brokerage account, and NTS
5 Capital being his fund. And you heard big numbers; a
6 million dollar transfer, there was a \$5 million transfer.
7 That exists. But if you look deeper, it was all there out
8 in the open. In fact, NTS Capital Fund is based at 1709
9 Slitting Mill Road. That's Vitaly Korchevsky's home. Some
10 criminal trying to transfer criminal money, criminal
11 proceeds to his home address for a JPMorgan to see and for
12 there to be a wire statement to be presented. That's some
13 mastermind. That's some coconspirator. But you have all
14 the records, you see all the trades, you see all the wires,
15 you see all the bank accounts. Nothing is concealed,
16 nothing is hidden, nothing is disguised. In fact, there was
17 a million dollar wire that was done in a legitimate way,
18 according to all the witnesses, when it came to the SNT
19 fund, and that was very consistent on what Vitaly Korchevsky
20 was doing for the Dubovoy's. It was just a way to maybe
21 trade more and make more money with a fund where you can get
22 more leverage. So the money that traded between the
23 Dubovoy's and Vitaly Korchevsky, according to everyone, was
24 legitimate and legal. So don't get lost in the idea that
25 some money changed hands, and big money, I understand. When

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1 you hear a million dollar transfer or five million dollar
2 transfer, that raises eyebrows, people perk up, I understand
3 that, but I would submit that it is a juror's job to not get
4 caught up on the surface, to not fall into a trap that any
5 lawyer, defense or the government, presents to you, but to
6 look deeper into it and to question as to whether or not it
7 makes sense. So if there's any money that was exchanged
8 between Vitaly Korchevsky and the Dubovoys, it certainly
9 wasn't hidden, it wasn't disguised, and it's hard to see how
10 it had anything to do with this supposed scheme.

11 What there is evidence of is that there was a
12 legitimate business ventures that Vitaly tried to engage
13 with Arkadiy Dubovoy about, and you heard that there was
14 plenty. You heard about AWD, and you heard about some Spain
15 real estate, and you heard about ACS, and there was an
16 e-mail that the government put forward to you, and it seems
17 to me that that e-mail confirms that there was potentially
18 expenses that went back and forth between Arkadiy Dubovoy
19 and Vitaly Korchevsky, and the expenses were made for these
20 legitimate business ventures. You didn't hear anybody deny
21 that. You didn't hear anybody come in and say: Yeah, we
22 called it in the annual filing for AWD Technology for the
23 state of Delaware for \$772, but it was really part of the
24 12 percent for the hackers. You didn't hear any testimony
25 about that. You heard only that this is legitimate expenses

1 which explain legitimate transfers and exchanges between
2 Vitaly Korchevsky and Arkadiy Dubovoy.

3 So, again, you want to see some type of money
4 transferred between two criminal coconspirators to keep the
5 conspiracy alive, but you are given none of it.

6 The government also tries to bring in the idea
7 that Vitaly Korchevsky's devices, ladies and gentlemen,
8 connect him to this illegal scheme and shows his knowledge
9 and shows his criminal intent, and this might be one of the
10 areas where some people might say: Why does he have it?
11 But let's talk about it.

12 First of all, these devices are seized from
13 Vitaly's home in August of 2015, no doubt about it, but
14 don't fall into the trap the government throws them at you
15 and says: Look at all these devices, Vitaly Korchevsky must
16 be involved and must have known about this criminal
17 conspiracy. None of those devices, ladies and gentlemen,
18 prove that Vitaly Korchevsky ever had a press release in his
19 hand. None of those devices -- the phones, the iPad, the
20 laptops -- prove that, beyond a reasonable doubt, that
21 Vitaly Korchevsky ever accessed a stolen press release or an
22 illicit website that you may have seen in an e-mail or an
23 e-mail address, and none of those devices actually contain a
24 stolen press release, ladies and gentlemen, the crux of the
25 case, the reason we are here.

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1 So when you are thinking about these devices and
2 wondering why, keep this in mind, that every single device
3 is connected to Igor Dubovoy. Igor is the glue that holds
4 these devices together. It's Igor that buys these devices
5 and gives them to Vitaly. It's Igor that sets them up,
6 loads them up, installs the software, uses them. It's Igor
7 that's connected to these devices. And it's Igor, ladies
8 and gentlemen, who is responsible for what's on them, not
9 Vitaly. The best example, the best example for that is the
10 iPad. The iPad that the government was willing to show you
11 and felt that it helped their case. Well, I disagree. The
12 best example to show how Igor is responsible for whatever's
13 on these devices is the iPad. First you hear evidence --
14 you heard evidence, ladies and gentlemen, that this iPad was
15 bought back in 2011 by Arkadiy Dubovoy, not Vitaly
16 Korchevsky. And you heard Arkadiy Dubovoy sent one of his
17 assistants or one his employers to go buy this iPad. And
18 then you saw from the extraction report, if you look on your
19 screens, ladies and gentlemen, when it says device name,
20 device name, which is the person who sets it up, gives it a
21 name -- we've all done that on a computer or a phone, an
22 iPad -- and this says Mark's iPad. Well who's Mark? It's
23 not Vitaly. It's not anybody in Vitaly's circle, but we
24 found out that it's Arkadiy's son. That's who Mark is.

25 So what makes more sense here, ladies and

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1 gentlemen, that this iPad is being bought for Vitaly
2 Korchevsky, or that Arkadiy Dubovoy sent his employer out to
3 buy an iPad for his son, Mark?

4 The government is quick to show you what was on
5 that iPad three years before Vitaly Korchevsky was in
6 possession of it. Three years. They found it in 2015 with
7 Mr. Korchevsky, and the artifacts that you were shown in
8 evidence related three years before that, 2012. The first,
9 you saw a Skype call, ladies and gentlemen, between Igor,
10 Pavel, and Roman in 2012. That was an artifact on the iPad.
11 You don't see an indication that Vitaly was part of that.
12 And certainly, these individuals, part of a Skype call in
13 December of 2012, it couldn't have been in Vitaly
14 Korchevsky's possession at that point and have them part of
15 this Skype call without Vitaly Korchevsky. Certainly, he
16 would be part of this if he was in possession of it. What
17 else is on there? There's a user account. Who sets up the
18 user account? Igor. In December of 2012. And do you
19 remember how he sets it up? With an address of 123 Main
20 Street. Clearly, an address that is trying to be concealed
21 and disguised. But not by Vitaly.

22 What else is on the iPad that the government
23 argued about? The Stargate 11 website. Five months earlier
24 in July of 2012, three years before Vitaly Korchevsky had
25 it, five months earlier before Igor set up the user account.

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1 What else?

2 (Continued on the following page.)

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Summations of Mr. Brill

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1 MR. BRILL: What else. Igor Dubovoy and the Option
2 House artifact. You heard that Igor Dubovoy traded in Option
3 House, Options House. That was his brokerage account.

4 So every single, up until this point, on this iPad
5 points to Arkadiy and there is more. Dawson, APD Capital, all
6 those companies that are related to the Dubovoy, not to
7 Vitaly Korchevsky. There is nothing related to Vitaly
8 Korchevsky on this e-mail except SKorchevsky the only KORCH
9 that we searched in there in 2015. Who is that? His wife's
10 name is Svetlana, who you are heard about, SKorchevsky.
11 That's the extent of what is on that iPad.

12 So this is an example, ladies and gentlemen, that
13 the Government will present to you, hey, here is an iPad, he's
14 obviously guilty because look at all of the things that are on
15 this, ladies and gentlemen. But if you look deeper, if you
16 don't fall into that trap, then what you're left with is an
17 iPad that's full of Igor Dubovoy and nothing about Vitaly
18 Korchevsky.

19 So keep that in mind. Dissect this evidence,
20 explore it, don't accept it without thinking about it. I urge
21 you, because this is the kind of thing that you will find.

22 And the Government goes further in trying to show
23 guilt when there is an innocent explanation or try to throw
24 something at you to show that Vitaly Korchevsky is clearly
25 part of this scheme and clearly knows clearly involved. And

Summations of Mr. Brill

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1 that is the artifacts that they presented to you, which were
2 found on laptops and were found on phones, and we've already
3 gone through the iPad. But what is really there, ladies and
4 gentlemen, and what is the explanation for it.

5 Over five years of the conspiracy and you see a
6 couple of artifacts that are on these devices. Don't fall
7 into that trap, that just because they are there that means
8 Vitaly Korchevsky is guilty. Think about it.

9 Listen to what I can tell you right now. And what I
10 will tell you is that if you look deeper into these devices
11 you'll see that it's Igor that is the connection to them.
12 It's Igor Dubovoy that is in control. Any artifacts that are
13 on these devices that are found with Vitaly Korchevsky come
14 from Igor not Vitaly.

15 The big ones, vmarken, ladies and gentlemen. You
16 saw the Government present evidence that on December 9, 2014,
17 there were two indications that that particular laptop
18 accessed or there was an artifact of vmarken. But what does
19 that really tell us? That Vitaly Korchevsky accessed vmarken,
20 set up vmarken, went on to vmarken? No. It tells that
21 vmarken was on that computer or there was an artifact of
22 vmarken on the computer. But that's a computer that Igor
23 bought, that Igor loaded up with Office 365. Keep that in
24 mind when you hear argument about vmarken.

25 What did you see actually? You saw two indications

Summations of Mr. Brill

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1 that vmarken, of vmarken artifact on that particular computer.
2 Why aren't there 200 contacts? If vmarken is the e-mail that
3 Vitaly Korchevsky is supposed to be using in order to access
4 press releases, I mean, there is 140, 150 press releases in
5 Rupion, which we'll get to, why isn't vmarken accessed on that
6 computer ten times, 50 times, 200 times? Maybe it's the most
7 important reason, and that's that Igor Dubovoy told the
8 federal agents when he spoke to them that vmarken was never
9 used by Vitaly Korchevsky. The fact that the Government
10 presents to you a device with vmarken should be discounted.

11 The Government presents to you evidence of the idea
12 of this Loscal e-mail address. We heard the Government during
13 the trial and during the closing make a big deal out of this.
14 I ask you to put yourself in your life's experience and ask
15 yourself if you've ever received an e-mail or a text that you
16 don't know where it came from or that you did not seek, you
17 did not request. And that you don't access, you just simply
18 receive it. You can't avoid receiving it. You can't make it
19 harder for the sender to send it to you. That's what happens
20 here.

21 You saw no evidence that Vitaly Korchevsky requested
22 Loscal. He's not requesting this material. He shouldn't be
23 responsible for somebody else's decision to send it to him.

24 The important question, ladies and gentlemen, is not
25 that it was sent, because there is no control for the receiver

Summations of Mr. Brill

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1 on that, unless there was evidence that he asked for it, which
2 there isn't; the important question is where is the evidence
3 that it was ever accessed, where is it on any of the Vitaly
4 Korchevsky's devices? Any of them. Not one artifact in
5 Loscal found on any of the devices.

6 This is supposed to be 2015 where the conspiracy is
7 buzzing at that point between Vitaly Korchevsky, supposedly,
8 and Igor Dubovoy. He has devices when he's arrested. They
9 are searched. You know they are searched. Nothing on Loscal.

10 The fact that it was sent and not requested is not
11 enough for you, as jurors, to find criminal intent, criminal
12 knowledge beyond a reasonable doubt.

13 So another example, ladies and gentlemen, that when
14 you look deeper into things, questions arise. I just urge you
15 to ask those questions among each other. And if you do, that
16 is where the reasonable doubt may be found.

17 Rupion, this is the big artifact where e-mail --
18 where press releases are found in the Rupion account. But
19 ladies and gentlemen, this is a Dubovoy special. This is an
20 Igor-controlled website. This is an Igor website all the way.
21 And that when Igor is arrested, it is Igor who tells Agent
22 Pierce about Rupion.

23 The Government didn't know about it, wasn't
24 following it. It was Igor who set it up. It was Igor who
25 logged in and searched for it.

Summations of Mr. Brill

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1 And we have to take Igor's word for what is going on
2 with Rupion. We have to take Igor's word about who accessed
3 Rupion. But Igor's word is not that great, as you heard
4 during this trial, and that we'll speak about. If it's all
5 connected to Igor, Rupion, and Igor's word can't be trusted
6 and is unreliable, then so is any testimony regarding Rupion.

7 But even more, ladies and gentlemen, even if you
8 credit Igor about telling the truth about Rupion, there is no
9 evidence that connects Vitaly Korchevsky with Rupion. Other
10 than Igor's word, there is no forensic evidence. There is no
11 laptops or computers or iPhones or iPads that connect Vitaly
12 Korchevsky with Rupion. Others have access to Rupion, because
13 Igor told us, Pavel, Pychnenko, we see no evidence that
14 connects Vitaly Korchevsky with it.

15 We heard a lot about Rupion. We saw a lot about
16 Rupion. There is 145 stolen press releases in Rupion. There
17 is no dispute about that, Igor was stealing press releases.
18 But that's not why we're here. Because even with all the
19 testimony about Rupion, there is no sufficient evidence that
20 exists that Vitaly Korchevsky ever possessed the stolen press
21 release or ever accessed the press release no matter what
22 Igor's testimony is about Rupion.

23 The fact that it exists is not enough. The fact
24 that the Loscal e-mail exists, is not enough. You should ask
25 for more. You should want to see more before you make the

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1 determination as to whether or not the Government can prove
2 anyone guilty beyond a reasonable doubt. Don't you want to
3 see someone accessing or possessing what they claim to be
4 stolen, then knowingly trading on that?

5 While we're talking about devices, ladies and
6 gentlemen, the Government also wanted to put before you the
7 evidence that Vitaly Korchevsky had a safe in his house. And
8 in that safe, as you see on the screen, the Government claims
9 that when the agent went in to search it there were three
10 phones in a bag. In fact, I think one was pink, one may have
11 not worked. I don't think they were all extracted, maybe they
12 were. This is an example, ladies and gentlemen, of the
13 Government throwing a fact at you and saying here look at
14 this, doesn't this look bad, isn't this good evidence of
15 guilt.

16 But if you look closer, like the other evidence, you
17 see that, first off, there is really no crime to have a safe
18 for some of your belongings. The safe is not hidden. It's
19 right there with clothes in a closet, all there to be seen.
20 But maybe more importantly, ladies and gentlemen, is that the
21 safe is there obviously to hold legitimate things, legal
22 things, papers, passports, envelopes. You heard Agent Taylor
23 go in, who searched the safe, and said if there was something
24 criminal in that safe, he would have taken it, he wouldn't
25 have left it there.

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1 So what are we really supposed to assume from this
2 safe and what was found in there? It looks like Vitaly
3 Korchevsky had a safe and kept legitimate things in there.
4 And that's what that picture shows and that's what that
5 evidence shows. It's not hidden. It's not kept from you.
6 It's there with every other envelope, every other passport,
7 every other piece of paper that was there for the agent to see
8 and leave it.

9 Couple of other things on the devices, ladies and
10 gentlemen, that were brought by the Government. I'll do it
11 quickly. The Government claims that Igor said that Vitaly
12 threw away devices. You got to trust Igor on that again.
13 Without Igor, the star witness, who wasn't mentioned during
14 their closing, you have no evidence that Vitaly Korchevsky
15 threw away any devices.

16 But there are devices that were found in Vitaly
17 Korchevsky's house. A couple of laptops, phones, iPad, it
18 doesn't look like someone who is trying to destroy devices or
19 get rid of them.

20 Then there was the discussion about this hot spot.
21 But I ask you, ladies and gentlemen, don't just hear that and
22 assume guilt. Understand that there is nothing criminal about
23 a hot spot. But more importantly, there is nothing that a hot
24 spot does that hides what you're doing from the rest of the
25 world. It's alleged that Vitaly Korchevsky was supposedly

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1 using a hot spot in order to trade to avoid detection. That's
2 the testimony. But does that make sense, ladies and
3 gentlemen? Because you heard in the IP testimony that and the
4 brokerage testimony that that IP address still accesses the
5 brokerage account. The trade is still there for the world to
6 see. There is nothing hidden by a hot spot.

7 The hot spot is being used when Vitaly travels,
8 travels to Ukraine, Israel or overseas. He's not the first
9 person to do that, there is nothing criminal about that. So I
10 would submit that this is another example of the Government
11 throwing something at you and wanting you to assume that it's
12 guilt.

13 I'll talk quickly about the IP addresses and the
14 travel records. This is where I'm not quite sure what the
15 Government is trying to say because we have no dispute about
16 what it shows. So I would ask you to keep this in
17 consideration, which is that we don't dispute that there are
18 hackers in the Ukraine stealing information. And we also
19 don't dispute that Vitaly Korchevsky is accessing the
20 Dubovoys' account and trading on it. So if the IP address
21 shows that Vitaly Korchevsky accesses his account and accesses
22 the Dubovoys' account, then we admit it. That's what he does.
23 Because that's what he was asked to do.

24 There is no dispute that Vitaly Korchevsky was
25 traveling a lot, because that's what he does. He travels

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1 around the country. He travels around the world. You heard
2 it from our character witnesses, church functions, children's
3 conferences. You heard that from Mr. Sipko, and even Arkadiy
4 said that. So when travels to Philly or Mexico or Kiev or to
5 Russia or Israel for these things, he traded as well.

6 So there is nothing about the IP address evidence
7 and there is nothing about the travel records that should lead
8 anybody to think that that is evidence beyond a reasonable
9 doubt or that helps you get to evidence beyond a reasonable
10 doubt that he's guilty of this crime.

11 He traded in the Dubovoys accounts, that's what he
12 did. So there is going to be IP addresses there. And he
13 traveled sometimes, and when he traveled he traded.

14 It's important to realize, ladies and gentlemen,
15 that nothing is being hidden by Vitaly Korchevsky. When he
16 travels, he uses his passport. There is evidence of where he
17 goes. When he accesses the brokerage account, the trade is
18 there, it's on the record.

19 If Vitaly Korchevsky was connected to this crime and
20 to the stolen press releases, you would expect to see more
21 from these devices. You would expect to see more from access
22 on websites or to stolen press releases. You would expect to
23 see less doubt about who owned the devices, where they came
24 from. Even considering all of these devices and what the
25 Government has put forth to you, I urge you to look at it and

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1 what you'll see is that there is doubt. There is a lack of
2 evidence that Vitaly Korchevsky ever accessed the stolen press
3 release or ever knew that he was trading on stolen
4 information.

5 So I say this, ladies and gentlemen, the Government
6 knows that. And they know that the evidence with respect to
7 these devices is weak. So they bring to you trading evidence.
8 They bring to you Dr. Canjels. They need to bolster their
9 case to show Vitaly Korchevsky's trading.

10 Even looking at the trading evidence, ladies and
11 gentlemen, you'll see that the case is insufficient as well.
12 So let's take a look.

13 I want to the first speak briefly about the experts,
14 if I can. First, Eugene Canjels. Always testifies for the
15 prosecution, employed full-time by the Government, unwilling
16 to concede any point and only considered 2011 to 2015.

17 On the other side, you had our expert witness,
18 Michael Mayer, who testifies more than half the time for the
19 federal Government, more than half the time, who lectures the
20 SEC and the FDIC, who acknowledges Dr. Canjels' work and said
21 that it was, these are rational slides. And who considered
22 all of Mr. Korchevsky's trading patterns, all of them, from
23 2009/2010 in addition to the accused period.

24 So overall, ladies and gentlemen, Mr. Mayer gave you
25 a balance, unbiased analysis of VK's trading pattern. That's

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1 what I ask that you remember when you're thinking about the
2 trading evidence.

3 I'll say one more thing, if I can, you heard there
4 was a rebuttal case right after Mr. Mayer left the stand. You
5 know why that was, that was because Mr. Mayer brought out
6 something the Government didn't bring out before you. That's
7 because Mr. Mayer brought out evidence about 2009 and 2010,
8 that didn't help them. And when they heard something that
9 they didn't agree with or wanted to dispute, they scrambled
10 and called Dr. Canjels back. That wasn't a point for them,
11 ladies and gentlemen, that was a reaction to Mr. Mayer, and
12 evidence how effective and reliable Mr. Mayer was.

13 They knew about the 2009 and 2010 brokerage
14 evidence. They knew what Mr. Mayer had said long before about
15 that, before we ever came into this court. So I want you to
16 keep that in mind when thinking about the rebuttal testimony.

17 Let's discuss, if we can, the trading evidence and
18 show you, ladies and gentlemen, that if you look at the
19 trading evidence you will see that the trading evidence is
20 entirely consistent with innocent trading and legitimate
21 trading.

22 First, as you heard from Mr. Mayer, Mr. Korchevsky's
23 trading is entirely consistent with how he traded between 2009
24 and 2010, before this scheme ever began. You know why,
25 because he's an earnings trader. You heard what that is.

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1 It's someone who trades at the end of the day. It's someone
2 who bets on what he thinks, or she thinks, the company is
3 going to report based on what the company is anticipated of
4 recording. You heard that he invested a similar percentage of
5 his account value in 2009 and 2010 that he did in 2011, 2015.
6 It is just more money between 2011 and 2015. You heard that
7 he made money both times. He made money between 2011 to 2015.
8 And he gained over \$200,000 in 2009 in stock gains.

9 And if you looked at the tax records of 2009 you see
10 that Mr. Korchevsky placed over \$124 million in trade sales.
11 The fact that if you look at 2009 to 2010 you will see the
12 similarities. You will see that it shows that between 2011
13 and 2015 when looking at between 2009 and 2010 that
14 Mr. Korchevsky's trades are innocent and consistent with how
15 he always traded long before this scheme ever happened.

16 I'll say one quick thing also about this window that
17 the Government has alluded to. There is no magic window,
18 ladies and gentlemen, when you're an earnings trader. The
19 Government wants you to think that that's a magic time and
20 that Mr. Korchevsky because he traded in a window he must have
21 knowledge of when that window started and when that press
22 release was uploaded. But ladies and gentlemen, if you're an
23 earnings trader, if you are someone who trades on the day or
24 near to the day the company announces earnings, the odds are
25 you're going to be in the window. That doesn't mean he knows

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1 about the upload time, ladies and gentlemen, it just means
2 he's an earnings trader. And that's a product of normal
3 earnings trading. It just happens to fall in the window. It
4 doesn't mean he's aware of the window and is trading on stolen
5 press releases, so please keep that in mind.

6 The second thing I want you to keep in mind, if I
7 can, ladies and gentlemen, is that the evidence is completely
8 inconsistent with someone who is knowingly trading on stolen
9 information. Because if you look at what happened to his
10 trading or what the results of his trades were, you would
11 think if he had information it would be much different.

12 Start with the 35 percent losses. 35 percent of his
13 trades were losses? That doesn't sound like someone who has
14 inside information. Wouldn't you expect to have fewer losses?
15 30 percent opposite of what the earnings surprise was, meaning
16 that the press release had an earnings surprise, it shows that
17 the company was going to do something different than they were
18 supposed to do, but Mr. Korchevsky trades opposite to that
19 earnings surprise. As it was said, he zigged when he was
20 supposed to zag. That doesn't sound like someone who has
21 knowledge of inside information.

22 Then there is DNDN, ladies and gentlemen, that the
23 Government makes a big deal about, that's up on the screen.
24 You'll hear, ladies and gentlemen, that he invested \$200,000
25 in this option but he had \$1.8 million to invest, so it was a

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1 small part of his account value. Why not invest more of it
2 especially if he has knowledge of something that nobody else
3 has? Why not put it all in there? With respect to DNDN,
4 ladies and gentlemen, if someone had knowledge of what they
5 were about to announce, they would have acted differently than
6 Mr. Korchevsky acted.

7 (Continued on next page.)

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Summations of Mr. Brill

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1 MR. BRILL: And it's late in the day, ladies and
2 gentlemen, and you heard Ms. Nestor mention that it happened
3 late in the day at 3:30 before DNDN made that announcement.
4 Well, that's what earnings traders do. So that fact alone
5 doesn't mean he possessed stolen information and traded on
6 DNDN as a result of it. You know, this was 2011, the heart of
7 the conspiracy that Mr. Korchevsky was supposedly part of this
8 conspiracy trades on this stock. So I have a question for
9 you, ladies and gentlemen, why not share it with the Dubovoys?
10 Isn't that the whole point? Isn't the point of the conspiracy
11 that if Mr. Korchevsky trades in the Dubovoys' account he gets
12 12 percent of that gain and if he happened to trade in his own
13 account he'll make that money as well, so why not do both?
14 He's got a sure thing here, apparently, with DNDN. Why not
15 put an investment in his own account and make a
16 hundred percent of whatever he makes, and then also make the
17 same trade for the Dubovoys and make 12 percent of whatever he
18 makes. Why not trade it for the Dubovoys as well? Unless
19 it's not part of this conspiracy. Unless it's not evidence
20 that Mr. Korchevsky possessed stolen information with respect
21 to DNDN. Certainly the fact that he didn't trade for the
22 Dubovoys is good evidence that he had no knowledge. So don't
23 get caught up in the trap that because Mr. Korchevsky made a
24 lot of money with DNDN that that means he must have had the
25 stolen press release.

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1 Same argument, ladies and gentlemen, with the trades
2 that he doesn't make for the Dubovoy. You heard from
3 Dr. Canjels and Mr. Mayer that Vitaly Korchevsky trades about
4 200 times in overlap with the Dubovoy and that makes sense
5 because he's trading for the Dubovoy and that's what the
6 Dubovoy is asking him to do, just like they asked him to do
7 in the year 2000. But on the other trades, close to 500, he's
8 not trading in the Dubovoy account, why? Why not? Why not
9 trade for them all the time? Why not make 112 percent instead
10 of whatever money you make in your own account? He's got
11 nothing to lose. If he places an extra trade in the Dubovoy
12 account that he has access to, then he makes that money in
13 addition to what he makes on his own. So ask yourself that
14 this -- look at this evidence, and if you do, you'll see he's
15 not trading as someone who is part of a trading scheme or else
16 he would just put all the trades in the Dubovoy account and
17 make more money.

18 There was some evidence that was entered, ladies and
19 gentlemen, with respect to the trading that was not discussed
20 when it was entered and it was chats between Vitaly Korchevsky
21 and someone at NTS Capital, which is his fund, and you see
22 that on Defense Exhibit K and you'll see Defense Exhibit M.
23 I'm not going to read through all of them because it's long,
24 but if you go to the second page of the chat you see in -- I'm
25 not sure if you can see it any clearer on your screen, but you

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1 see on November 6 of 2012 there is a conversation between
2 Vitaly Korchevsky and someone at NTS Capital. And what
3 they're talking about there is stock tickers and Zacks
4 ratings. And if you look, you see there is a discussion
5 between stock tickers and what Zacks rating is. You see
6 things like ARNA, Z3 pharma company, numbers look down next
7 quarter, 26 percent short. EIA Z4, numbers sloping this
8 quarter and next, look short, thin traded stock. RAX, Z3 but
9 looks overbought. This is a conversation that's being had
10 between Vitaly Korchevsky and someone at his fund.

11 Now why would he have this conversation about what's
12 going on between these companies and Zacks? Why would he care
13 what this person at NTS Capital is saying about what Zacks
14 thinks about these companies. NES Z2, utility company, but
15 looks and priced very interesting. Numbers look bad and
16 getting worse, but I don't know. Insider bought 7K shares
17 last month.

18 This is legitimate research, ladies and gentlemen.
19 This is not someone who trades on inside information. This is
20 someone who's researching the company, wanting to know what
21 the earnings are going to be and then placing a bet as a
22 result of it. The same goes for Exhibit M. You see, there's
23 lines and lines of ticker symbols Z1, Z2, Z4, Zacks ratings.
24 And you heard from Mike Mayer, our expert, who told you that
25 these are legitimate rating services. When you have -- when

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1 you are trading as an earnings trader you follow places like
2 Zacks and you look at what the consensus is and you try to
3 take a bet as to what the stock will do. That's what's going
4 on here.

5 Why would he go through the trouble, why would he
6 care? Why not just look at the stolen press releases, leave
7 people at NTS Capital, go into some room and just trade on the
8 stock -- the stolen releases. Why care what anyone at NTS
9 Capital thinks about whether the stock is going to make money
10 or the insiders bought or if it's a Z1 or a Z5.

11 This is realtime, ladies and gentlemen. These are
12 chats that are going on in 2012 and 2013. It's not trading
13 like someone who is trading on stolen press release
14 information and this didn't come from the government, you
15 heard it from us. And this is not what easy money looks like,
16 ladies and gentlemen. It doesn't make sense that someone who
17 has inside information would do what Vitaly Korchevsky is
18 doing.

19 You know a lot has been made also of the newswire
20 chart that Dr. Canjels gave you which shows that, according to
21 the government, that Mr. Korchevsky is trading in line with
22 certain newswire services, and they're right. An earnings
23 trader certainly would care where the information is coming
24 from. So why does that happen? And does that automatically
25 mean that Vitaly Korchevsky has the inside information, has

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1 the stolen press releases, or does that mean that someone who
2 is giving him the information, who is asking him to place
3 trades, like let's say the Dubovoys, has that information and
4 has the hacked, stolen releases. So the fact that
5 Vitaly Korchevsky is placing the trades, ladies and gentlemen,
6 that happens to be in line with newswire services does not
7 mean that Vitaly Korchevsky has the actual stolen releases or
8 access to stolen releases in order to place that trade. It
9 means someone did, but it doesn't mean Vitaly Korchevsky did.

10 We told you, ladies and gentlemen, and you heard
11 from the evidence that Arkadiy Dubovoy has a relationship with
12 Mr. Korchevsky that goes back to the year 2000, and it's to
13 trade for him. And there's no difference here. The only
14 difference is that the Dubovoys are being dishonest about
15 telling you that they told him where the information came
16 from. And as we said, someone like Mr. Korchevsky would not
17 have ever agreed.

18 The information starts with the Dubovoys and the
19 Dubovoys have access to the press releases and the stolen
20 information. It's their scheme. It's their fraud. Even in
21 the text messages that the government showed you and the
22 timeline between Igor and Vitaly Korchevsky, those trades
23 start with a phone call between Igor and Vitaly Korchevsky.
24 Igor is the one who starts those trades. Igor is responsible
25 for the trades that happen between Vitaly Korchevsky and Igor.

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1 It doesn't mean that Vitaly Korchevsky had access to the
2 stolen press releases.

3 So where are we? The government has failed, ladies
4 and gentlemen, to show beyond a reasonable doubt a connection
5 between Vitaly Korchevsky and the hacked material. The
6 government has failed to present sufficient forensic evidence
7 beyond a reasonable doubt that he actually accessed stolen
8 press releases. They failed to show beyond a reasonable doubt
9 that Vitaly Korchevsky's trading showed his knowledge of the
10 stolen information. So if we stopped here, if we looked at
11 the devices and the forensics and the trading, there's doubt,
12 there is reasonable doubt. And if you had to give a verdict I
13 would submit that would -- should be not guilty.

14 So who does the government bring in to save that
15 case, to put more on it, to add to it? Star witnesses one and
16 two: The Dubovoys. The liars, the cheaters, and the thieves
17 that they are. That's who was put before you, ladies and
18 gentlemen, to hold this conspiracy together. That's who the
19 government didn't feel like mentioning to you or addressing
20 their faults and flaws when they summed up.

21 These are the two who have lied to banks, who have
22 lied to others during business deals, who have lied to their
23 business partners and embezzled from them, who have lied to
24 federal agents during proffer sessions, meetings, interviews
25 with the government, who have lied to prosecutors. Does

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1 anybody think that an oath to tell the truth here would stop
2 them from lying to you? Does anybody feel they respect you
3 more than they do the agents and prosecutors that they sat
4 down with? Does anybody deep down think that they would buy a
5 home from them, a used car, a vacuum cleaner? If your answer
6 is no, then how is it possible to rest a verdict of this
7 magnitude on them? The government has put them before you and
8 the government wants you to believe them beyond a reasonable
9 doubt, but how can that be? How can they be trusted to that
10 extent and how can you, ladies and gentlemen, rely on them in
11 a case like this?

12 The Dubovoy's come down to this: These are guys that
13 are always looking for a scam, they're looking for a deal, and
14 they're always looking for a way out. And a plea agreement or
15 an oath to tell the truth or the fear that they may lie to a
16 federal agent or a federal prosecutor is not really going to
17 get in their way of who they are. They are who they are. And
18 certainly what happens to Vitaly Korchevsky is not going to
19 stop them as long as it helps them. So of course they would
20 lie to themselves, ladies and gentlemen, any chance they got.
21 And you heard that they did.

22 Igor Dubovoy, the government's star witness, who was
23 interviewed close to 15 times by the government and he was
24 asked point blank ever committed any crimes and his answer was
25 no, never mentions his crimes. So no problem lying to the

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1 prosecutors, no problem lying to the agents.

2 He never told them about those bank records that he
3 altered, made phony one time, three times, a dozen times. And
4 he didn't just lie once to the prosecutors, he lied over and
5 over again on each of those meetings by not telling them. And
6 he didn't just alter bank records one time or a few times, but
7 over and over again whenever it would suit him. So why, if
8 he's able to do that whenever he wants, however he wants, why
9 should we trust him here and how can he earn your trust to
10 rely on him in this case?

11 And even after confronted they didn't give up that
12 lie, even though they were caught in that lie they didn't
13 really come clean, especially Arkadiy Dubovoy, ladies and
14 gentlemen, when he was asked about altering bank records. In
15 fact, what you heard from Arkadiy Dubovoy was that he wasn't
16 really sure this was a crime. He didn't really think there
17 was anything wrong with it and we know he's probably the one
18 that instructed Igor to do exactly this. Didn't really look
19 like it was a problem. He just felt like, hey, you're going
20 to phoney up some bank records if you have money in one
21 account and you don't have money in another account, who
22 cares. Take a bank record, take a heading, go to the computer
23 and change it. It doesn't matter that you're defrauding the
24 people on the other side of the deal, it doesn't matter that
25 you're deceiving the bank, it didn't phase him it was wrong.

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1 It didn't phase him that it was a crime. He would do it
2 again, it seemed like, if it would help him. So a guy that
3 does that, ladies and gentlemen, a guy that does that over and
4 over again just to purchase real estate, imagine what lies he
5 would tell to keep his freedom. He's just not a guy and
6 they're just not two guys that you should rest a verdict of
7 this magnitude.

8 Even his explanations, ladies and gentlemen, it's
9 not as if he can come in -- when Arkadiy was asked about
10 altering bank records, it's not as if he said you're right,
11 it's wrong, I'm sorry, I won't do it again, I know it's
12 illegal. The explanations were absurd. His argument was,
13 well, if I had the money in another account, who cares if I
14 altered the bank records in a separate account. I mean, it's
15 absurd. Is that who you want to rely on, is that who you want
16 to believe? Because you have to believe them because they are
17 the ones who tell the story. They are the ones who tell the
18 story about Vitaly Korchevsky. They are the ones who
19 explained the devices and the email accounts. They are the
20 ones who explained how Vitaly Korchevsky supposedly agreed to
21 enter this particular conspiracy.

22 You know, the Dubovoy's didn't just lie about that,
23 ladies and gentlemen. So it's clear who they are, when I
24 mentioned in my opening statement that this is about two
25 different kinds of men, it's true. You also heard Arkadiy lie

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1 about hiring his friend Pychnenko's lawyer. You remember
2 Pychnenko, who was convicted of a drug crime here in the
3 United States, and he looked you in the eye and he said he
4 only paid \$3500 to his wife for some expenses. That's what he
5 told you under oath about that. But then on cross-examination
6 things changed. He was confronted with the fact that there
7 was much more money paid through him and his son to hire a
8 lawyer for Mr. Pychnenko. You heard it was not just \$3500 but
9 close to \$60,000, \$55,000 to be exact and you saw a retainer
10 agreement and you saw an email. You know that Arkadiy knew
11 that. You know that he instructed that, you know that that
12 was his money, but he wouldn't admit it under oath even after
13 he was confronted with that lie. He knew he was lying, but he
14 did it anyway. And it was almost a joke to him about him.
15 But I can assure you this is no joke to Vitaly Korchevsky.

16 And I'll go one step further, ladies and gentlemen.
17 Why would he not admit that he paid for Pychnenko's lawyer?
18 Why lie about something like that? What's the big deal? And
19 I would submit that there is a reason. Because it's
20 reasonable to believe based on this particular evidence that
21 he was involved in that. That it was his money that was used
22 to finance that drug crime and that's why he happened to be in
23 Florida, Panama and Hawaii in 2009, all the same places that
24 Pychnenko was in. That money that Arkadiy paid, that \$55,000,
25 ladies and gentlemen, sent Pychnenko a message that would keep

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1 the Dubovoy's out of jail. That was the length, that was his
2 decision, that was how he was going to do that deal, but he
3 wasn't going to admit it here under oath before you, and that
4 is the government's star witness.

5 But you know what, ladies and gentlemen, based on
6 what you heard, why should he tell you the truth anyway. I
7 mean, he lied here. You heard that he never admitted that he
8 committed the crime of bank fraud or altering bank records and
9 the best we could do is that -- and Igor too, is that when
10 asked about their plea agreement, which is their agreement as
11 to what their contract is between them and the government and
12 what they have to do and all the things they have to do in
13 order to maintain that plea agreement, the best that the
14 government can do is say, you know what, we're going to hold
15 that plea agreement in question. We see that you lied, we see
16 you didn't tell us about altering dozens of bank records, but
17 we're going to -- we're not going to tear it up. You still
18 have it and we'll keep it in question. As far as I know,
19 ladies and gentlemen, it's still in question.

20 Now, Garkusha said that if he lied his plea
21 agreement was null and void, so which one is it? I mean,
22 because it's the government that decides if the lie is big
23 enough or if it's too small, if they want to rip it up, if
24 they don't want to rip it up, and what is the question. What
25 are they waiting for with respect to Igor Dubovoy's plea

Summations of Mr. Brill

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1 agreement by holding it in question? Is it that if there is a
2 conviction, they'll put it back. If there's an acquittal,
3 then it will really be bad for him. What is the question?
4 Don't be part of this dangerous game between the government
5 and Igor Dubovoy. Don't let the government have it both ways,
6 ladies and gentlemen. That they used this plea agreement to
7 show you, hey, ladies and gentlemen, he's telling the truth.
8 Look at this plea agreement, he has everything to lose if he
9 violates it. But then at the same time they don't enforce the
10 plea agreement when their witness violates their plea
11 agreement. So they have it both ways. They can use it when
12 it helps them and if it gets violated they can also use it and
13 not enforce it. Don't buy into that power. And it's you that
14 should hold Igor and Arkadiy to their truth and their honesty,
15 not the government making a determination as to whether or not
16 the plea agreement should live or die.

17 You know, ladies and gentlemen, the Dubovoy's are not
18 just liars but cheaters as well. Let's not forget that the
19 first chance they got, ladies and gentlemen, first chance
20 Arkadiy got was to cheat the hackers. He's given this
21 opportunity to trade on stolen press releases, he has access
22 to hacked material, he knows who the hackers are and he knows
23 what the scheme is and the minute he sees that, he says I
24 think I can do better. I think I can use the hackers to help
25 myself. I'll cheat them. And so what he does is he opens up

Summations of Mr. Brill

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1 new bank accounts that they don't know about. Because if they
2 don't know about it then they don't access those accounts and
3 take the money from the hacking. He cheats so much that even
4 the thieves and the cheaters that he does business with, he
5 cheats them too. I think they call that no honor among
6 thieves.

7 That's their witness, ladies and gentlemen, that's
8 their star witnesses, that's the guy that you have to believe
9 in order to -- in order to find Vitaly Korchevsky guilty
10 beyond a reasonable doubt. They're going to lie who they have
11 to lie to and cheat who they have to cheat and I ask that you
12 don't let them get away with it.

13 So, now back to the facts, ladies and gentlemen. If
14 Arkadiy Dubovoy says that he met Vitaly in this airport and
15 talked about this scheme and he's lying about that too, and
16 it's clear because it makes no sense, ladies and gentlemen.
17 The evidence makes no sense that Vitaly Korchevsky would
18 agree. You heard that he was principled, you heard he was
19 well known, you heard he was no criminal, no thief, no cheater
20 like the Dubovoy. So it makes sense that they would not tell
21 him about where they were getting the information. It makes
22 sense that they would manipulate someone like
23 Vitaly Korchevsky to get what they wanted, like they had
24 always got what they wanted.

25 And you know why it's clear that Arkadiy Dubovoy is

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1 lying to you about that meeting and about what happened in
2 this scheme, ladies and gentlemen, it's clear when you heard
3 from Slavic Zayats, who came in and testified. Someone that
4 on the government summation didn't even address. And what he
5 told you, when he came here all the way from Atlanta to
6 testify, is that what Arkadiy Dubovoy said to him was very
7 different than what Arkadiy Dubovoy said to you. Very
8 different than what he said to the prosecutor, to the agents.
9 Because when he was in the privacy of his hometown where
10 nobody was looking, where he was with a mutual friend, Slavic
11 Zayats, he told Slavic Zayats the truth. And there it is on
12 the screen.

13 Mr. Zayats, the question was asked, tell us what
14 Mr. Dubovoy said to you during the meeting?

15 Answer: I was curious as to, and I would say that,
16 did Vitaly have anything to do with that matter? Did you
17 really give him some information and did he know about it?
18 Dubovoy categorically denied that. He said if I had given
19 information and I had told him so, that information was
20 illegally obtained he would have stopped doing business with
21 me.

22 That sounds truthful because that's what we've been
23 saying all along about Vitaly Korchevsky and you had it here
24 from Slavic Zayats, who came here from Atlanta just to tell
25 you.

Summations of Mr. Brill

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1 And the best the government can do is ignore the
2 statement on cross-examination, don't address where you were,
3 how he said it, why he said it, what else did he say? Are you
4 sure he said it? Was he just kidding? Did he have a reason
5 to say it? Don't address the statement which is something
6 that affects the credibility of their witness, but address how
7 Slavic Zayats makes maintenance money when he helps around the
8 building that his son owns. Make some type of argument that
9 Slavic Zayats must be incredible or must be lying to you
10 because he has some financial interest because he makes \$700,
11 a couple of thousand dollars when he fixes air conditioners or
12 needs to be reimbursed as a maintenance worker. That's what
13 the government chose to cross Slavic Zayats on even though
14 Slavic Zayats basically told you that Dubovoy had said
15 something completely different. Something that, if true,
16 would make Vitaly Korchevsky not guilty, but instead he talked
17 about his maintenance payment.

18 So let's assume, ladies and gentlemen, even though
19 it's clear that Mr. Dubovoy's words can't be trusted about
20 what happened during this scheme and what happened during this
21 meeting in the airport in 2011, let's assume that this meeting
22 actually happened. Where is the evidence that the scheme
23 started? Where is the evidence that an arrangement was made?
24 Where is the evidence that Mr. Korchevsky agreed? I mean, if
25 you listen to Mr. Garkusha, who tells you about the day, the

Summations of Mr. Brill

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1 meeting is held in the airport and then at the office a couple
2 of days later. At the office they review legal, legitimate
3 websites. Websites regarding technical analysis of stock
4 trading. Two or three websites are looked at in Garkusha's
5 office. Garkusha is looking over the shoulder of Vitaly to
6 learn from him. These are legitimate websites that they're
7 looking at. Nothing is agreed to. In fact, according to
8 Mr. Garkusha, who is one of the government's witnesses,
9 nothing is worked out. Mr. Korchevsky leaves and doesn't
10 agree to anything. No fraudulent scheme is presented to
11 Vitaly, and nothing is discussed as to how this scheme
12 actually begins afterwards. So where is that line, how do we
13 make that leap from this meeting where Vitaly is down there
14 looking at legitimate websites to an agreement that he wants
15 to be involved now and will be involved in a multimillion
16 dollar stock trading fraud because Arkadiy says that's what
17 happened afterwards, because the government says that's what
18 happened afterwards. What did Arkadiy tell you? Where are
19 the facts that show that this agreement was -- existed and
20 discussed. What makes more sense, ladies and gentlemen, is
21 not that. What makes more sense is that Vitaly is down there
22 to discuss with Arkadiy what he had discussed back in the year
23 2000 and what he had done for Arkadiy by trading for him and
24 helping him make money with respect to trades. He trades
25 legitimately for him. The one difference now is that Arkadiy

Summations of Mr. Brill

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1 possessed stolen information and needed to figure out a way to
2 use Vitaly Korchevsky.

3 And one last thing about Arkadiy Dubovoy, ladies and
4 gentlemen, two things. One is that he doesn't just lie to
5 Vitaly Korchevsky, he doesn't just lie to the prosecutors or
6 to you, he keeps everybody in the dark, ladies and gentlemen.
7 The hackers themselves, as we said, but also to his secretary,
8 for example, Larissa, who, during the conspiracy that Arkadiy
9 is deep into, who is the mastermind, who is the schemer, the
10 guy who is the middle person between the hackers and trading,
11 he had his secretary, Larissa, sending wires and sending
12 emails.

13 (Continued on the next page.)
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Summation - Mr. Brill

3111

1 MR. BRILL: (Cont'g.) With respect relative to this
2 particular scheme. Not a care in the world that he's bringing
3 his secretary unknowingly into this particulars scheme. And
4 that's a pattern, ladies and gentlemen, bringing people in
5 that don't know, as long as it helps you.

6 If he has to get a wire out of an email, who cares
7 who Larissa's making a wire payment that just so happens to be
8 part of the hacker team. Who cares as long as you get the
9 wire out, you don't have to tell Larissa or keep her in the
10 dark.

11 Keep in mind that Alex Garkusha, who came here and
12 told you about what he didn't know, his own partner was doing
13 it. That from 2011 to latter years of 2012, almost two years,
14 a guy who literally works in the same office as Arkadiy
15 Dubovoy, didn't know he was trading on stolen press releases.
16 Is it any stretch to say that he makes a habit of keeping
17 people in the dark; keeping people away from things that he's
18 doing; not telling them about it if it doesn't help them.
19 Alex Garkusha had to find out threw an accountant that Arkadiy
20 was trading on stolen press releases. And they work in the
21 same office.

22 That's who the government presented to you. And I
23 would submit, ladies and gentlemen, that Mr. Dubovoy is not
24 worthy of belief.

25 Now, one last thing about Mr. Dubovoy.

Summation - Mr. Brill

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1 Put a sock in his lack of credibility. Put aside
2 the fact that he lies a lot and cheats a lot, and steals when
3 he has to in order to get what he has to do. Look at his
4 testimony as it came out. Ask yourself, as you listen to the
5 government's charge when deciding the credibility of the
6 witnesses, has he given you an accurate version of what has
7 occurred? Has he been forthright. Has he had a memory? Has
8 he had a good perception? Has he been able to tell you a
9 story that you can understand. Or was he scattered. Was it
10 disjointed. Was it unreliable.

11 Because I would submit that if you look back and
12 think back as to what Arkadiy Dubovoy testified to, you'd see
13 something amazing. What you'd see is that, and you can check
14 the record for yourself, almost a hundred and twenty-five
15 times during his testimony, whether it be on direct or on
16 cross, and you can see it on the screen, Mr. Dubovoy said, "I
17 don't remember" or "I don't recall." "I don't remember now."
18 "I don't recall exactly." "I don't recall well." "I don't
19 recall exactly." "I no longer recall." That's a good one. A
20 hundred twenty-five times. We stopped counting at 125 times,
21 ladies and gentlemen.

22 So ask yourselves, can you rely on someone who
23 answers in that fashion when being asked about questions of
24 this magnitude. This has nothing to do with whether or not
25 he's lying to you, which I will submit that he is, but it has

Summation - Mr. Brill

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1 everything to do with whether or not you find him to be a
2 reliable witness; someone that you can get behind and say I
3 can trust what he's saying. I believe that he can recall
4 things. I have faith that what he's saying is accurate. A
5 hundred twenty-five times I don't recall. I don't remember.

6 Please take that into consideration when evaluating
7 his testimony and the government's case.

8 On the flip side, ladies and gentlemen, from the
9 Dubovoys, you have Vitaly Korchevsky's stellar reputation.
10 And it's not me that's telling you that because I'm his
11 lawyer, because I guess that's what lawyers do who represents
12 clients, they speak for their client, and they speak as
13 favorably as they can for them.

14 But it's not me who is saying that, it's Viktor
15 Lange, who works in a factory in New Jersey, who took the day
16 off and put on the suit to tell you that Vitaly Korchevsky
17 preaches the word of God and he also lives it. It's Igor
18 Akulov, whose wife just had their fourth child, right, and
19 traveled all the way to New York to tell you that. And he
20 told you that he could not have come to the United States
21 without Vitaly Korchevsky's help, and he could not have
22 purchased a home without his financial assistance.

23 And then you have Evans Zografakis, who is not part
24 of the church, but is a friend and a business person in the
25 community, and who traveled all the way from outside

Summation - Mr. Brill

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1 Philadelphia to give you his opinion. And he told you that
2 Vitaly Korchevsky bought several homes for those in need, and
3 that he considers him truthful and honest.

4 And then finally, Mr. Sipko, who came all the way
5 from Washington state, across the country. He testified about
6 a half an hour, uninterested, all on his own, not subpoenaed,
7 and told you that he was the president and vice president of
8 the Slavic -- he was the president of Slavic churches,
9 Mr. Korchevsky was the vice president at some point, and that
10 he knows Mr. Korchevsky's reputation to be an honest person.
11 In his own opinion, Mr. Korchevsky's an honest and truthful
12 and rule-abiding and compassionate and generous person.

13 So overall, ladies and gentlemen, four witnesses
14 came in and made it clear that Vitaly Korchevsky does not
15 possess the character traits to commit this crime that the
16 grand jury's charged him with. And that it would be
17 completely inconsistent with his character for him to have
18 committed the crimes. The same character that his community
19 knows him. The people that have been around him, have worked
20 with him, have lived next to him, have prayed with him.

21 And I think it's pretty apparent, ladies and
22 gentlemen, that those witnesses were not really prepared and
23 polished like the government witness were. If you remember
24 back, a lot of them didn't even know where to look when they
25 were being asked the questions on direct examination.

Summation - Mr. Brill

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1 But they were honest, and they were sincere, and
2 they were authentic, and they all led to one important
3 conclusion, that in their view, what they saw, knowing Vitaly
4 Korchevsky better than us, that he's an honest and truthful
5 man.

6 So Vitaly might have wonderful character references
7 but it doesn't mean that he's a great judge of character,
8 because it is clear that he does business with the Dubovoy's,
9 knowing who they are. And he does business with them and
10 trades for them and makes good money doing that.

11 And it would be wrong to leap from that, to leap
12 from the idea that Vitaly Korchevsky does business with
13 Arkadiy Dubovoy; does trade for him; is interested in making
14 more money with him; is interested in traveling and doing
15 other types of business ventures. It would be wrong to make
16 that leap to say, therefore, he was in on it; therefore, he
17 had knowledge.

18 So I want to try to draw that distinction, if I can,
19 that one has nothing to do with the other. That doesn't mean
20 that he had access to stolen information. That it doesn't
21 mean that he was cheating the system. It doesn't mean that he
22 had knowledge of these stolen press releases information. It
23 just means that he had a relationship with Mr. Dubovoy; that
24 he wanted to do business with him; and that at the same time
25 Vitaly Korchevsky is an earnings trader and was doing very

Summation - Mr. Brill

3116

1 well during that time.

2 The government can argue that Vitaly Korchevsky
3 should have known, even though their argument that he had the
4 knowledge, and that he probably knew what was going on but
5 that he deliberately avoided it. That may come out of their
6 mouth. I don't know. But ask yourself, ladies and gentlemen,
7 knowing what you know about Vitaly Korchevsky from the
8 witnesses, does he look like someone who would deliberately
9 close his eyes, deliberately avoid something that's guilty and
10 do it any way? Or would he do just the opposite, actually
11 deliberately stay away from them?

12 Couple of things, and then I leave you. And this is
13 something that I would ask that you also keep in mind, similar
14 to the government's burden, and beyond a reasonable doubt, an
15 obligation and requirement that you're going to hear from the
16 Court, and that is that -- you will also hear this from the
17 Court -- that Mr. Korchevsky has the right to remain silent.
18 He does not have to testify. The entire case rests on the
19 table of the federal government. They have the burden of
20 proof and defendant Mr. Korchevsky has no burden to prove
21 anything. But that's the law, and that's what the Court will
22 tell you you have to -- instruct that you have to follow.

23 But I want to be frank. I understand that some
24 people might say, well, I'd like to hear from him. I mean why
25 didn't he testify? And I ask -- I say that I understand those

Summation - Mr. Brill

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1 are natural feelings, but I urge you to follow the Court's
2 instruction, and I urge you to follow the law with respect to
3 that, no matter how maybe uncomfortable it makes you feel, and
4 to respect what makes our system unique. And that if you feel
5 frustrated that you wanted to hear from him, that when you
6 deliberate and you give a verdict, that you don't take it out
7 on him, but you take it out on me.

8 So the federal government, ladies and gentlemen, has
9 a ton of power. And they can accuse people. They can charge
10 people with crimes. They can go to a grand jury and get an
11 indictment and then they can arrest. And that is an awesome
12 power. And they have it.

13 But there is one thing that they cannot do. And
14 that is that they cannot convict anybody. That can only be
15 done by you. And that can only be done if there is proof
16 beyond a reasonable doubt, which is absolutely not been done
17 in this case on this evidence. So I don't get a chance to
18 stand up here again and remind you of that fact. But I don't
19 think that I have to. So I'll leave you with this.

20 There may be a lot of binders. There may be a lot
21 of pages. There may be a lot of charts. There may be a lot
22 of emails, witnesses. But there's also a ton of reasonable
23 doubt. And that's why I ask that you find Vitaly Korchevsky
24 not guilty. Thanks a lot.

25 THE COURT: Why don't we take an afternoon break and

Summation - Mr. Brill

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1 resume at 2:15. Don't discuss the case.

2 THE COURTROOM DEPUTY: All rise.

3 (Jury exits the courtroom.)

4 (Whereupon, a recess was taken at 2:11 p.m.)

5 (Continued on next page.)

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Proceedings

3119

1 THE COURT: By way of reminder. At the break, after
2 Ms. Whalen finishes, we need to discuss the juror, No. 8,
3 which, given our progress, may have to some extent resolved
4 itself. But we have other juror issues to discuss.

5 But the point I want to mention is that now that
6 I've had an opportunity to work on the charge, I'm making
7 language changes. I think I can tell you with clear conscious
8 it's not a substantive change. But I want to alert you to the
9 fact that I'm taking a lot of the repetition out particularly,
10 and I'm changing the language, particularly where we deal with
11 the object crimes of the conspiracy counts that are not
12 standalone substantive counts because you just get a headache
13 reading it. As a lawyer, and as a juror, I can only imagine
14 makes it sound like they have to prove it, they don't have to
15 prove it so I will alert you to that and we'll talk some more
16 about it after we're done.

17 At your leisure when you get the charge, you could
18 e-mail my clerk who will be around tomorrow. So any issues
19 you have with it. Most importantly, if I've indeed stumbled
20 into some sort of substantive change, I don't think I have but
21 judgment.

22 But you know it's very frustrating when you have to
23 give these charges and look at the jurors and you're speaking
24 this sort of structured, overly structured, formal legalese.
25 I'd much rather charge them purely in plain English. Courts

Summation - Ms. Whalen

3120

1 of appeal tend to frown on it, that sort of common sense
2 approach. Be that as it may.

3 All set?

4 MS. WHALEN: Yes.

5 (A brief pause in the proceedings was held.)

6 THE COURT: Take a very short break after
7 Ms. Whalen.

8 MR. TUCKER: Thank you, your Honor.

9 COURTROOM DEPUTY: All rise.

10 (Jury enters courtroom at 2:33 p.m.)

11 THE COURT: All right. Please be seated.

12 Ms. Whalen, all jurors.

13 MS. WHALEN: Thank you.

14 Good afternoon, ladies and gentlemen.

15 THE JURY: (Collectively) Good afternoon.

16 MS. WHALEN: I once saw a great attorney give an
17 amazing summation where he walked up to the podium and said:
18 You were here, you saw the evidence, you know what happened,
19 you know who's telling the truth. Go back and deliberate.
20 And I truly wish at 2:30 in the afternoon when you've been
21 here the whole time that I could do that as well.

22 Mr. Brill has covered a lot of the points, so
23 Mr. Lee and Ms. Bass and I are going to try to make this a
24 work in progress and not cause too much repetition.

25 But this is a serious case, Mr. Khalupsky is charged

Summation - Ms. Whalen

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1 with serious crimes, and I want to make sure that you hear our
2 side and you understand the points that we're trying to make
3 in this case.

4 So, ladies and gentlemen, the Government opened in
5 this case saying that this case was about stealing and
6 cheating and corrupt stock traders making millions of dollars
7 publicly trading on stolen information. And we agree that
8 there was stealing and there was cheating and corrupt stock
9 traders made millions of dollars in this case, but
10 Mr. Khalupsky was not one of them.

11 You heard a lot of testimony about devices. You've
12 heard a lot of testimony about voluminous records. You've
13 heard a lot of testimony with trading on stolen information.
14 And I would argue to you that the evidence in this case falls
15 into three categories. The first category is the cooperators
16 testifying and hoping to get a benefit from their testimony.

17 The second category is witnesses who work for the
18 Government and presented evidence.

19 And the third category are devices that were seized
20 and the companies that were victimized in this case and you've
21 heard evidence of those things.

22 And I argue to you that the information you heard
23 from the cooperators should just be rejected. The information
24 you heard from most of the witnesses from the Government
25 should also be rejected. And the evidence you heard about the

Summation - Ms. Whalen

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1 devices and the companies victimized in this case doesn't
2 prove Mr. Khalupsky guilty beyond a reasonable doubt.

3 The key here is proof and it's proof beyond a
4 reasonable doubt. And the way you get to proof is you have
5 information. You have evidence. You get it from witnesses.
6 You get it from documents. You get it directly from someone
7 saying, I did that. And you get it circumstantially from
8 someone trying to link a couple of facts together to get you
9 to an end point.

10 Ladies and gentlemen, I don't think there's anything
11 that you would call direct evidence against Mr. Khalupsky in
12 this case. And with the circumstantial evidence, you need to
13 be able to draw those reasonable, logical, inferences from
14 each piece of evidence that you heard. You can't speculate
15 about what happened. You can't assume what happened. And you
16 can't fill in the blanks to jump from one piece of evidence
17 over to another piece of evidence. It's got to all logically
18 connect.

19 Ladies and gentlemen, proof beyond a reasonable
20 doubt means that you are committed to understanding that
21 Mr. Khalupsky has committed this crime. It's not possibly
22 that he committed this crime. It's not maybe that he
23 committed this crime. The Government is supposed to present
24 you with proof beyond a reasonable doubt and they haven't done
25 that here.

Summation - Ms. Whalen

3123

1 And let me just remind you because you heard
2 Mr. Brill's summation and I think he helped himself with that
3 attribution to my brilliant colleague's cross-examination
4 work.

5 Ladies and gentlemen, we don't work with them, we're
6 not associated with them. We represent Mr. Khalupsky and only
7 Mr. Khalupsky. And Mr. Khalupsky and Mr. Korchevsky have to
8 be considered separately in this case. They're two separate
9 men. There's no evidence that they knew each other. There's
10 no evidence that they knew about each other and our defenses
11 are not linked.

12 So while Mr. Brill is able to help himself to all of
13 the evidence we've brought before you, make no mistake, you
14 have to judge the evidence from Mr. Khalupsky alone, not in
15 conjunction with Mr. Korchevsky. This case has been charged
16 as a conspiracy and the Government's introduced evidence that
17 they want you to use against both men. But stay alert in that
18 consideration of the evidence because the evidence has to be
19 considered separately against each man as to whether it shows
20 he knew about the conspiracy, he was part of the conspiracy,
21 and he acted in furtherance of the conspiracy. And they've
22 double mic'd me today so you'll stay awake. And the first
23 technical -- if I'm too much give me a hand up and I'll back
24 up.

25 The first technical issue to resolve is venue. You

Summation - Ms. Whalen

3124

1 heard testimony about where these stock trades were clearing.
2 You heard testimony about where checks were being sent from.
3 And you were presented with this evidence because the
4 Government is trying to prove the issue of venue.

5 A prosecution is only supposed to be brought in the
6 location where the securities fraud actually occurred. And
7 the judge is going to instruct you on the details of the law.
8 But, ladies and gentlemen, I put it to you that that location
9 is not Brooklyn and that location is not the Eastern District
10 of New York. The wire services were not hacked in Brooklyn or
11 the Eastern District of New York, they were located in
12 New Jersey and elsewhere. The co-conspirators didn't trade in
13 Brooklyn or the Eastern District of New York and the Stock
14 Exchange is located in Manhattan.

15 The things that happened in Brooklyn and the Eastern
16 District of New York, like taking the other side of the trade
17 or clearing the trade, I argue to you, that that's not
18 material to what the securities violation was here. The acts
19 of the crime were stealing the information, distributing the
20 information, and trading on the information. And none of that
21 took place in Brooklyn or the Eastern District of New York.
22 And those multimillion dollar transfers from JPMorgan on
23 Mr. Korchevsky's behalf, they have nothing to do with
24 Mr. Khalupsky. Without venue, you could find Mr. Khalupsky
25 not guilty of this crime right off the bat.

Summation - Ms. Whalen

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1 But let's move on to the three types of evidence
2 that I put to you. And let's start with the cooperators.

3 Igor Dubovoy doesn't have any firsthand knowledge
4 that Mr. Khalupsky was part of this conspiracy. Arkadiy
5 Dubovoy, he doesn't even know my client's first name. He
6 called him Vadim, he called him Vladimir. He never once -- go
7 back and read that testimony. He referred to my client as
8 Vladislav.

9 And Mr. Garkusha. Mr. Garkusha couldn't even
10 identify my client. You could reject their evidence based on
11 that alone and find Mr. Khalupsky not guilty. I think
12 Mr. Brill has gone through this, and I'm going to put it to
13 you, the second are reason that you can reject their testimony
14 is they're liars. They lied to each other during this
15 conspiracy. Everyone was cheating on each other about trading
16 in private accounts. I think it's been definitely shown that
17 they lied to the Government both in their cooperation and in
18 their preparation sessions. They've lied about who the
19 participants in this conspiracy were. They lied about the
20 things they've done with respect to forging documents. And I
21 also think they lied to you here in court about this
22 conspiracy and about their roles in this conspiracy. I think
23 they lied to you about what they knew about the conspiracy and
24 all the illegal things they've done in and around this
25 conspiracy.

Summation - Ms. Whalen

3126

1 In general, they lied about their finances. This
2 chart, I'm not sure the people in the back can see, but it
3 lists all of the companies that each of these people testified
4 about or you heard evidence about.

5 Given the documents that you've seen maybe for a few
6 minutes but you'll be able to examine during deliberations.
7 Given the millions of dollars that you've seen moving around
8 in this case. Given all of the co-conspirators overseas and
9 all of the places that these people have traveled to. All of
10 the places they have ties to. All of the places they have
11 bank accounts in. Do you think that this is the extent of
12 their financial holdings? When they came up and testified to
13 you, were they honest and forthcoming about where the money in
14 this scheme had gone?

15 Igor Dubovoy and Arkadiy Dubovoy have money
16 judgments against them. Those were handed down, I believe, in
17 2016. And two years later, the only money that's been paid
18 into those judgments is what was seized on the day of their
19 arrest. And Alexander Garkusha, he hasn't even been asked to
20 provide a financial accounting because he's only being held
21 responsible for the money he traded on.

22 Well, look at APD Developers, the company that he's
23 50 percent of or was at a time. Look at the real estate. Go
24 back to Mr. Dubovoy's Exhibit A and look at the real estate be
25 that's invested there. Look at the value of the real estate

Summation - Ms. Whalen

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1 that's invested there. Think about how APD was able to buy
2 and invest in all of that real estate and, ladies and
3 gentlemen, the way they were able to do it was from the money
4 coming out of this conspiracy. And for Garkusha to get away
5 with saying, Oh, I didn't trade, or I only traded for a few
6 months, and the Government's giving him a free pass on all of
7 the money that's been earned from these illegal trades.
8 Ladies and gentlemen, that's not right.

9 Garkusha, Mr. Garkusha, oh, he's a 50 percent
10 partner in APD, and all of a sudden, when he's on the stand he
11 starts acting like he doesn't know who Arkadiy Dubovoy is.
12 He's a 50 percent partner of APD until he suddenly realizes it
13 might not be good for him to be a 50 percent partner. And
14 then his 50 percent partnership are turns into, Oh, nothing's
15 in writing, that was a verbal agreement.

16 Ladies and gentlemen, in terms of finances and all
17 the other facts, the Government took the cooperators here at
18 their word but you don't have to. The Government didn't ask
19 the hard questions. The Government didn't follow up with
20 things that they found in the evidence. Things that didn't
21 fit in with their theory but you don't have to. You look at
22 the testimony of their cooperators. You see if they answered
23 the hard questions, or when a hard question was asked if it
24 suddenly became I don't remember, I don't recall. Look at the
25 evidence and you hold the Government to its burden of proof.

Summation - Ms. Whalen

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1 One thing you may have noticed from the testimony of
2 these cooperators, even if the Government didn't, is that
3 these people only admit what they can be confronted with on
4 paper or digitally in an e-mail. If there's no document, if
5 there's no text, if there's no e-mail, they won't acknowledge
6 it as an act of the conspiracy. They won't acknowledge a
7 person as a participant in the conspiracy. They won't admit a
8 location for funds of the conspiracy. And that means that it
9 was critical for the Government to go through their
10 cooperators' stories with fine tooth comb to decide whether
11 those cooperators were telling the truth, to decide whether
12 they could be trusted, and to decide whether they were worthy
13 of being put in front of you to testify at trial.

14 And over and over and over and over again in the
15 testimony of each of these cooperators you saw that the
16 Government had not gone through the details of their
17 involvement or the details of their acts in the conspiracy.
18 And you saw the Government had no interest in finding out the
19 details about other participants in this conspiracy. And you
20 know the cooperators were required to present them with that
21 evidence. They were required to volunteer that evidence, not
22 wait until they were asked, not wait until they were presented
23 with a document. They were supposed to be forthcoming. They
24 were supposed to identify everyone involved in this
25 conspiracy. They were supposed to identify everyone who had

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1 acted in this conspiracy. And they were supposed to identify
2 every part of this conspiracy, and that's what their
3 cooperation agreement required.

4 In fact, what you found out on cross-examination, is
5 that the Government ignored their conspirators' roles in the
6 conspiracy. They ignored their knowledge of the conspiracy.
7 And you saw when they put those people up, they had no idea of
8 whether what they were going to say was the truth. And, in
9 fact, at some point they had no idea what was going to come
10 out of their mouths at all.

11 You heard first from Igor Dubovoy. The Government
12 used him to try to make four points against Mr. Khalupsky.
13 The first point was that Pavel Dubovoy brought Mr. Khalupsky
14 into the scheme. The second point was that Mr. Khalupsky
15 placed trades on behalf of the scheme. The third point was
16 that Igor wired him money as part of the scheme. And the
17 fourth point was that Mr. Khalupsky asked him to make changes
18 to the account that they were trading in. But if you go back
19 and you look at the testimony, Igor's actual testimony, you'll
20 see that Igor has no way of knowing whether Mr. Khalupsky
21 knows anything about this scheme. Igor wasn't present at the
22 initial meetings with Mr. Khalupsky. Igor didn't tell you in
23 any discussions with his father about Mr. Khalupsky and this
24 scheme.

25 The only discussions Igor had with his daddy were

Summation - Ms. Whalen

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1 about how much money to send to Mr. Khalupsky. And if you go
2 back and you look in these e-mails you're going to see this
3 those honest accountings for services provided. It's not just
4 flat money traveling back and forth. He's sending bills.
5 He's explaining where the trading accounts are coming from.
6 He's explaining how much of a percentage of profit he's
7 entitled to and he's putting all of that information there an
8 e-mail as an invoice so that the Dubovoy's have a problem with
9 it they can get back to him and say we don't agree with your
10 numbers.

11 If Mr. Khalupsky thought that he was in an honest
12 trading relationship with these people. If he thought that he
13 was trading their money as part of his brokerage company
14 Dolphin then he's not a participant in this scheme and he's
15 not guilty of any of the crimes charged. You heard
16 Mr. Dubovoy testify about how he went to Dolphin at one point.
17 He went to Mr. Khalupsky's brokerage firm to learn how to
18 trade stocks. And he didn't testify that he was taught
19 anything illegal. He testified that he was taught about
20 volume trading. He testified he was taught about earnings
21 trading and he testified that when he was there, he learned
22 that Mr. Khalupsky was no longer a trader, that Mr. Khalupsky
23 taught other people how to trade and that he ran his business.

24 You also learned be that while he was there, he met
25 an individual named Dovhaychuck which, later on, the

Summation - Ms. Whalen

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1 Government linked up to this illegal trading scheme. And
2 Mr. Dubovoy claimed that be Dovhaychuck was, working for
3 Pavel. But you heard no testimony from Igor Dubovoy that
4 anyone at Dolphin ever told him that he was involved in any
5 illegal scheme.

6 Finally, Mr. Dubovoy Igor Dubovoy testified that
7 Mr. Khalupsky was no long trading for his father in 2014.
8 Igor was asked on his direct testimony from the Government to
9 identify e-mails making payments. But as I explained, they
10 were requests for services rendered. There is nothing wrong
11 or illegitimate with them. He's sending banking details to
12 where he keeps his money as any individual who is sending a
13 bill would do. And you know what's really interesting today?

14 What's really interesting is suddenly Caresse
15 trading becomes a shell company. Let's think about where we
16 heard evidence of that. Who got up on the stand and testified
17 to you about what a shell company is and how a shell company
18 works and where shell companies are located. Ladies and
19 gentlemen, that was nobody.

20 The Government has presented information that my
21 company had bank accounts overseas. That he had an account in
22 Cypress and an account in I believe in the Grenadines and SK
23 Intertrading overseas. We identified them, we cross-examined
24 on them, but you've heard no evidence that any of these are in
25 any way shell companies. And that's the kind of leap in

Summation - Ms. Whalen

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1 circumstantial evidence that you can't do in this case.

2 The Government can't suddenly stand up and start
3 calling something a shell company when there hasn't been any
4 testimony about that when you haven't heard from any kind of
5 expert explaining shell company is how it's work and how it's
6 used. I tried to ask Mr. Dubovoy, Arkadiy Dubovoy, I think it
7 was, about this company and about why someone would send money
8 overseas. And Arkadiy Dubovoy, because it wasn't in the
9 script, is all like, I don't know, I don't know. But you
10 didn't hear testimony from anyone else about what a shell
11 company is.

12 You then heard testimony from Igor Dubovoy that he
13 was sent an e-mail to reconfigure the Merrill Lynch account
14 that this is terrible thing.

15 Ladies and gentlemen, at the look at the of the
16 e-mails look at the first e-mail February 27, 2013, it's
17 coming from Mikhail Panchen to Mr. Khalupsky talking about
18 what configuration needs to be done in the Merrill Lynch
19 account, that's Defense Exhibit I in translation.

20 Let's go to the next one. Mr. Khalupsky sends it on
21 right away it Dubovoy 01 who we know is Arkadiy Dubovoy's
22 e-mail address. Basically, looks like a cut and paste took
23 Mr. Pychnenko's e-mail, put it in his and send it to
24 Mr. Arkadiy to answer the question because doesn't know let's
25 move to the next e-mail.

Summation - Ms. Whalen

3133

1 Next e-mail is he, let's see, October 27, 2013, and
2 it's the same will e-mail sent again to Arkadiy Dubovoy.

3 Now, you're being presented with these e-mails of
4 oh, look at this, Mr. Khalupsky is asking to have the account
5 configured. He's asking to have the account changed.

6 But, ladies and gentlemen, be he asked for that in
7 February of 2013. And nobody took any action on it so he
8 resends it again in October 2013. And then there's another
9 e-mail where finally Igor gets back to him and explains how to
10 reconfigure the account.

11 So, ladies and gentlemen, I put it to you. This
12 isn't evidence of wrongdoing. This isn't evidence of any kind
13 of emergency. This isn't any evidence of someone acting like
14 this is important that it needs to be done right away so we
15 can get along with our evil trading. It's a request
16 apparently everyone ignored it. It got sent again because the
17 problem still existed in the account and then Igor testified
18 or responded to it and testified about it.

19 There's nothing but Igor's testimony and the way
20 that the Government presented these e-mails to lead you to
21 think that this is somehow evidence of wrongdoing. A request
22 to reconfigure an account. A request to say, we can't do
23 these trades we're going try to do other trades is a
24 completely legitimate account that was sent in February or
25 legitimate request sent in February not responded to until

Summation - Ms. Whalen

3134

1 October. It doesn't make it evidence of wrongdoing.

2 You also heard testimony or you saw Mr. Igor
3 Dubovoy present himself as someone who is unsophisticated with
4 respect to trading. And I just like to walk you through a
5 little bit of his testimony to see where he starts. So Igor
6 on direct is testifying and the judge said, well, let's finish
7 that thought. How do you make money if the price goes down.
8 Igor says, I'm not a hundred percent sure of how that all
9 works. The judge is like, okay. I just know it's a
10 possibility. So poor Igor Dubovoy doesn't know how the stock
11 market works.

12 Let's see what he next says. What prompted you to
13 send this e-mail? My father knew that he and I think he's
14 referring to Mr. Korchevsky was traveling at the time and he
15 just wanted to make sure that the trade is conducted we don't
16 lose money on the accounts. So he may not know a lot about
17 trading but he's up on the money and he want to make sure they
18 don't lose money.

19 Let's go to the next, then he's asked again and just
20 so it's clear a short position is. And suddenly he's able to
21 answer and say, oh, you're betting on the stock to go down.
22 And he's asked what's a long position. It's betting on the
23 stock to go up. Question: How do you provide those
24 instructions? I have an Excel sheet written where I would
25 show what -- I had an Excel sheet written that would show

Summation - Ms. Whalen

3135

1 where I would input numbers that I got from Korchevsky and
2 they were translated into percentages of the profile and I
3 would send a text message of those percentages to Garkusha and
4 Leonid. What prompted you to provide those percentages as
5 additional instructions beyond just providing the particulars
6 to trade? My father asked me to do that because they didn't
7 know of how strong of a trade to place or how much of their
8 portfolio to put in that trade. Doesn't sound like someone
9 who doesn't know what's going on in the stock market or in
10 stock trading and let's go to the last one. Then the last
11 one. Was what is this document, Mr. Dubovoy? This is a list
12 of stocks that we approached how much we purchased them for,
13 how much we lost and the realized losses or gains off that
14 trade. Sounds like he knows who he's doing?

15 So then finally, yeah, yeah, we will I'm asking you
16 isn't fair from the fact that lack of profitability that shows
17 that were. Igor: From what I understand there are multiple
18 variables of how far the market were react to certain set of
19 news to certain news and sometimes even if you get your
20 numbers correctly aligned, the market itself because there are
21 people other people involved in the market might not react to
22 it.

23 It doesn't sound like amateur hour to sounds like
24 somebody who knows what he was doing because he was taught how
25 to do it and yet he sat there and tried to present himself

Summation - Ms. Whalen

3136

1 didn't know what a short was.

2 After trying to portray himself as unsophisticated
3 he then tried to portray his father Arkadiy Dubovoy as
4 somebody who is not computer literate. Who had to call on his
5 son to prepare his e-mails and send wires on his behalf.

6 Ladies and gentlemen, when you go in the back look at the
7 e-mails between Igor and Arkadiy Dubovoy. The ones in Russian
8 he knows what he's doing he's sending father a detailed
9 accounting his father is understanding where every single dime
10 is going.

11 The Government would have you believe that Arkadiy
12 Dubovoy, the owner of these multimillion dollar companies,
13 this empire where he has business meetings on the second floor
14 of his houseboat that this man is so unsophisticated that he
15 can barely use his e-mail. But if you go back and you look at
16 the exhibits you're going to see that that's not what was
17 going on.

18 What you are going to see is going on is that
19 Arkadiy Dubovoy is a man who is smart enough to leaving a very
20 small digital footprint. And he lets his son and Garkusha be
21 the ones who were tied to the record of illegal activity he's
22 in the background pulling the strings telling people what to
23 do but he makes sure his hands aren't on any of these
24 documents.

25 In the middle of Igor's testimony, the Government

Summation - Ms. Whalen

3137

1 had him talk about the Latvian hotel swindle and he tried to
2 have Igor presented to you as someone some sort a victim and
3 Igor Dubovoy portrayed a funny deal but on cross-examination
4 you learned there was nothing funny about it.

5 You learned it was a criminal fraud and that there's
6 a prosecution pending in Latvia. And you refreshed that it
7 involved a fraudulent transfer of more than \$6 million or what
8 appeared to be \$6 million between two Dubovoy accounts. Boni
9 and DBM Engineering and it happened in July 2013. If you look
10 at Defendant's Exhibit HH, we didn't have it up there for
11 long. When you're go back and you have a minute you can look
12 at it and see the swindle that's going on the transfer of
13 money between one account and another on July 3rd. And then
14 you see on July 5th the same thing.

15 But look at Mr. Levanti's money or spreadsheets that
16 we put in as Defense Exhibit EEE. If you only see one side of
17 that, you think it's a transfer of \$6 million. So the
18 Government let's Arkadiy Dubovoy come up and talk about this
19 as a funny deal when, in fact, it's straight-up money
20 laundering and the Government let him testify about how oh,
21 man he lost \$150,000 in this deal. Well, he's clearly in the
22 middle of a fraudulent deal, so if he lost money, he lost the
23 money that he was using to try to commit become a bigger
24 spindle. And, again, where does anyone think this \$150,000
25 came from in July 2013 from the Boni account in the middle of

Summation - Ms. Whalen

3138

1 the timeframe of the scheme that the Government is talking
2 about. This money came from an Igor and Arkadiy Dubovoy
3 fraudulent trading. So no boohoo about him losing \$150,000.
4 Why are you supposed to Igor and Arkadiy Dubovoy that they
5 lost money in another money laundering scheme.

6 One thing as a side note. I think it's pretty
7 interesting that Arkadiy Dubovoy thinks Igor Dubovoy is just a
8 witness in this case. I think it's pretty interesting that
9 Igor Dubovoy hasn't let his father know that he's actually
10 been charged with a crime, and I put it to you that it looks
11 like Igor Dubovoy is getting ready to throw his father under
12 the bus the minute he gets it Latvia. I guess familial
13 devotion apparently has its limits.

14 You learned from cross-examination that Igor knows
15 how to forge bank account records. You have know that he did
16 so for the Everest accounts and the DBM Management accounts.
17 And when you look when you're deliberating, if you care, you
18 can see that those both are forgeries of the July 20, 2013,
19 Boni accounts. And you can look at them, they're pretty crass
20 where the numbers don't add up on front page.

21 But the interesting thing about these documents is
22 that when Ms. Felder showed him the forged documents on
23 cross-examination, he knew exactly what they were. He
24 instantly admitted it. There wasn't any hesitation, there
25 wasn't any, Oh, wait your it. Oh, suddenly I do remember

Summation - Ms. Whalen

3139

1 this. And that's Igor and Arkadiy Dubovoy and Garkusha's MOs
2 all over this case. They deny or they can't recall something
3 until you show them an actual document and then suddenly they
4 remember to and suddenly they've got an explanation even the
5 five minutes before it was all I never heard of that I don't
6 know what hour talking about I don't recall any of those
7 dealings.

8 And then the Government called Arkadiy Dubovoy to
9 testify about these forged bank records. And Arkadiy Dubovoy
10 actually got up there on the stand and told with a straight
11 face that he didn't even know it was illegal to forge a bank
12 statement. Well, for Igor doesn't that even pass the
13 straight-face test. Igor is proudly up here testifying about
14 his business administration degree. He claims to be working
15 in real estate. He claims to be working in hedge funds, and
16 yet, Arkadiy Dubovoy wants to tell you, Oh, Igor didn't know
17 it was illegal.

18 And part of this whole thing is their claim or
19 Arkadiy Dubovoy's claim, I don't think Igor did. But Arkadiy
20 Dubovoy's claim we had the money in another account so he
21 would transfer the money. Well that kind of begs the
22 question. If you've got the money in an account, why are you
23 submitting a forged document? Why are you just submitting a
24 copy of the account where you have the money. But, ladies and
25 gentlemen, I think you only forge a document when you don't

Summation - Ms. Whalen

3140

1 want to show your real bank statements and you don't want
2 people to know where your real bank accounts are and you don't
3 want people to know where your real bank accounts are located.

4 Igor Dubovoy fessed up to the forgery and then said,
5 oh, I never told the Government about it and maybe he didn't.
6 But, ladies and gentlemen, did the Government ever look in
7 these records? These documents are attached to e-mails. The
8 forgeries are in with Igor has Dubovoy's e-mails and the
9 Government has them. There's a composite exhibit called 201
10 that has everybody has e-mails in this case and the
11 Government's be been introducing those e-mails all over the
12 place. And there's an stipulation in this case, Stipulation
13 901, that talks about how all of these e-mails are accurate
14 and that these are the accurate e-mails that they got from
15 Google and Yahoo and all the other e-mail providers.

16 So, ladies and gentlemen, you've got these e-mails
17 about forgery smack in the middle of the timeframe of the
18 conspiracy and the Government never noticed them and the
19 Government never investigated them.

20 They're clearly not interested in finding out
21 whether their cooperators are telling the truth. They're not
22 interested in finding out whether these people should be
23 believed. They're only interested in going forward with the
24 with their theory of the case with blinders on.

25 I think you know they're not interested in

Summation - Ms. Whalen

3141

1 investigating this case because you heard the testimony of
2 Thomas Levanti. Thomas Levanti testified how he had 20 years
3 of money laundering experience and he was asked on
4 cross-examination if he had noticed the transfers between Boni
5 and DBM in the bank accounts he was reviewing. He said yes,
6 yes, he did. And then he was asked if he was asked to follow
7 up on it and, no. No, he wasn't.

8 What you've learned through these documents and
9 through Igor's presentation of himself is that the Government
10 is giving you a very limited presentation of their
11 cooperators. Without cross-examination, Igor Dubovoy would
12 have walked out of this room and you would have just thought
13 he was some poor stooge being manipulated by his father. Some
14 poor guy who doesn't realize in the training that what he was
15 doing was criminal. And yet he knew enough to use burner
16 phones. He knew enough to get false addresses for those
17 burners phones. He knew enough to register those burner
18 phones in false names. And he knew enough to set up false
19 e-mail accounts. Like Rupion and Loscal. And he thought it
20 was okay to forge bank records and not tell the Government
21 about it.

22 So my argument to you is why on earth should you
23 trust anything he says especially when the Government is
24 getting up and saying, Oh, look at our overview you know is
25 true because Igor said it or Arkadiy Dubovoy said it. You

Summation - Ms. Whalen

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1 don't know that anything's true based on what Igor or Arkadiy
2 Dubovoy said. And you know that by looking at the documents
3 and digging into the documents and reading the
4 cross-examination and comparing it to the direct examination.

5 Now, Mr. Tucker may get up on rebuttal and he may
6 say, well, Igor lied to us, he fooled us. You can still
7 believe he's telling the truth about the scheme and maybe for
8 other individuals where there's other evidence of
9 participation in this scheme be you could.

10 But for Mr. Khalupsky you don't have to have that
11 evidence. You've got in the cryptic e-mails that the
12 Government introduced that they're now trying to put a spin on
13 through the testimony of Igor and Arkadiy Dubovoy and you have
14 no reason to believe that that spin is the truth.

15 And just backing up. You also know not only have
16 they not revealed everything to the Government not only have
17 they not revealed everything that was going on in this case,
18 they actually sat out there and didn't reveal information to
19 you when they were testifying because both Igor and Arkadiy
20 Dubovoy were confronted with an individual be named Alexander
21 Sasha Ledovskiy and Igor said I don't know him. But if you
22 look at Igor's phone records, his entry is right there in
23 Igor's phone, 415-B. If you look further, he's getting calls
24 from him. And if you look even further into -- we could skip
25 to the e-mails about the payment -- I think we missed that.

Summation - Ms. Whalen

3143

1 But anyway if you go back into the payment, you'll see that
2 Igor is sending Sasha Ledovskiy e-mails that are wires through
3 a company called Baltech. You'll see that Igor and Arkadiy
4 Dubovoy set Sasha up with a brokerage account called MNI
5 Advisors, Interactive Brokers I think it was. You'll see that
6 they wired \$1.88 million into that account, apparently, for
7 Sasha to have to trade and you'll see that those wires to,
8 excuse me, took place in 2014. And you'll see that the
9 contact between Arkadiy Dubovoy and Igor and Sasha carried up
10 until, I believe, it's May 2015. You can see that in the
11 phone records.

12 And, ladies and gentlemen, they're arrested in
13 August of 2015. And they go in and they meet with the
14 Government. Igor went in the day after this arrest Arkadiy
15 Dubovoy went in a month after his arrest and not once did they
16 mention to Alex Sasha Ledovskiy.

17 (Continued on the next page.)
18
19
20
21
22
23
24
25

Summations of Ms. Whalen

3144

1 MS. WHALEN: And when they're up here, it almost
2 became comical. Arkadiy was like, No, I don't know him.
3 And then Maybe I met a trader named Sasha. And it's like
4 confronting him with a document. It's like, Well, he's in
5 your phone. He's like, Oh, no, no, no. And then, He's
6 calling you all the time. And then it's like, Oh, we were
7 going to start a business together. And then it's like, He
8 was calling me to get money. And then he's pointing out,
9 Well, he wasn't calling you. You were calling him. And
10 then suddenly, I don't remember. I don't recall.

11 Ladies and gentlemen, they were in contact with
12 that man shortly before their arrest. If you're being asked
13 at a meeting, Who were the participants in this scheme?
14 Sasha Ledovskiy would have been one of the people right at
15 the top. He's someone you just had contacted with.

16 So then you have to ask yourself, Well, why didn't
17 they tell the Government about Sasha Ledovskiy? Was it
18 Valera Pychenko's warning, the warning that was sent
19 through Arthur Bumburyak that conveyed to Igor Dubovoy when
20 he told Igor there were people he shouldn't be talking
21 about? You're told that you're supposed to trust Igor's
22 cooperation agreement, so how can you have any, any
23 confidence that Igor was telling the truth to you when he
24 violated the cooperation agreement at every turn? You're
25 being told to trust what Igor Dubovoy said, relying on

Summations of Ms. Whalen

3145

1 Mr. Khalupsky's statement. If you have any confidence in
2 Igor's testimony that you can do that?

3 And I see people are getting bored and I see
4 everybody waning, so let's just skip through Arkadiy. You
5 guys were here. You heard the testimony. You know who to
6 believe. And there are plenty of documents in evidence that
7 shows you that Arkadiy Dubovoy did not reveal the extent of
8 his participation in this conspiracy.

9 So the first thing I draw your attention to is the
10 fact that he doesn't know my client's first name. Go back
11 and count: Ten times calling him Vadim; 15 times calling
12 him Vladimir, never once calling him Vladislav. And that's
13 even when he has a copy of the trading authorization that
14 has my client's driver's license attached to the back, not
15 even a week to sort of look at the document, even if you
16 don't remember someone's name.

17 The second thing about Arkadiy Dubovoy that I
18 think is important is that he wants you to believe that the
19 first time he met Mr. Khalupsky, a guy that he's never met
20 before, in Odessa, the very first time they meet, he claims
21 that he laid out this illegal scheme to him; this illegal
22 scheme that he wouldn't reveal to his son; that he wouldn't
23 reveal to his friends when he had the moment, but he lays it
24 out to Mr. Khalupsky right in that first meeting? Ladies
25 and gentlemen, that's just ridiculous.

Summations of Ms. Whalen

3146

1 I'm just skipping over Sacha's stuff.

2 The one thing I would like to draw your attention
3 to, though, with respect to money, and I think you can bring
4 up Government's Exhibit 828, if you could find that?

5 Because Arkadiy Dubovoy didn't remember the \$70,000 wire to
6 Mr. Ledovskiy, Sasha. He didn't remember the \$80,000 wire
7 to Sasha.

8 And actually, can we have the translation up?
9 Yeah, let's put up the translation.

10 So that's the document. You can see both. And he
11 didn't remember the \$1.8 million transfer to start a
12 brokerage account with Sacha.

13 And the Government went to this and they're
14 saying, Oh, look at the money that's going to Mr. Khalupsky.
15 Look at the money that's going to be traders.

16 Let's go to Page 4 of that document -- oh, wait.
17 It starts on Page 1.

18 The very first entry is the Roma card, and you're
19 told, Oh, that doesn't have anything to do with wrongdoing.
20 That doesn't have anything to do with this offense. Well,
21 you know, then on the other hand, you're being told all
22 about Roma, and Roma's a hacker, and Roma's this and Roma's
23 that. So either this isn't the Roma involved in the case.
24 But if it's not the Roma involved in the case, how can you
25 be sure that any of the other e-mails or phone calls or

Summations of Ms. Whalen

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1 whatever you've been shown into evidence that deal with Roma
2 relate to some wrongdoing Roma, and not this poor schmuck
3 who happened to get his debt in Arkadiy -- who just happened
4 to have his debt with Arkadiy?

5 And let's go to Page 4. And I don't remember you
6 guys being asked about this or being told about this or
7 Arkadiy being asked to explain this. But let's see, who is
8 Sacha D that's getting \$800,000? Who is "Illegible" that's
9 getting \$900,000? Why are debts marked with percentages?
10 Why wasn't Arkadiy asked to explain to that? Does he do
11 loan sharking on the side? Who is Ostrov, and why did he
12 get \$450,000? And who, apparently, is at the top getting
13 \$250,000? And why is the Riga Hotel crossed out? Is that a
14 reference to the Latvian hotel?

15 Clearly Arkadiy Dubovoy is somebody who knows
16 where his money is going, knows how much he spent, and he's
17 a very, very tight fist from him. For him to suddenly have
18 amnesia about Sasha Ledovskiy and the 70,000 to 80,000, and
19 I think if you go to the Boni bank account records, you'll
20 see even more money going to him. But he doesn't remember
21 that. So clearly, ladies and gentlemen, he's hidden what he
22 know about Sasha Ledovskiy from the Government. And if he
23 has hidden what he knows about Sasha Ledovskiy from the
24 Government, he's violated his cooperation agreement. He
25 hasn't been fully forthcoming, and he hasn't told us

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1 everything he knows about the case.

2 The other thing is, Does the Government see the
3 investigation? Who knows. But it doesn't seem like they
4 want to hear about anybody or anyone who is going to
5 interfere with what their theory of the case is. How
6 Arkadiy Dubovoy having an undercover relationship with a
7 trader at Dolphin and setting that trader up as an accounts
8 trader, doesn't sit with the Government's theory that
9 Mr. Khalupsky knew what happened.

10 Do we have that email that Sacha -- well, do we
11 have the early email from Mr. Ledovskiy at Dolphin? Because
12 the Government's shown you some emails from an individual
13 named Anton Ivanov, and they're arguing that this Anton
14 Ivanov is working with Mr. Khalupsky's knowledge and sending
15 out wrongful information. I'm sorry. We're going to pull
16 this up in a minute.

17 But what I'm arguing to you is that -- what I
18 think you can do in the back is you can look at e-mails from
19 Sasha Ledovskiy in 2011 -- I'll start at the very early one.
20 You can look at e-mails from Sasha Ledovskiy in 2011 and
21 he's talking to Pavel and Arkadiy, and he's giving them
22 information about Dolphin. He is giving them
23 Mr. Khalupsky's information about how to get onto different
24 platforms. And then if you go back. I don't know that we
25 have it -- but if you go back you'll see that suddenly on

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1 October 6th there's an email account created, so 195, dot,
2 dot, dot, dot 114, you will see on email address is created
3 for an individual named Anton Ivanov. And the Government's
4 presented you with another email from Anton Ivanov sending
5 more information where they are talking about, Oh, Vlad
6 wants us to send you -- you know, We missed the cutoff for
7 these stocks and missed the closing time for these stocks,
8 and Vlad wants you to get new information so you'll know to
9 be on time. And they're saying, Oh, this has everything to
10 do with illegal stock trades. Well, if you look at the
11 attachment to this email, it's a calendar from a public
12 company that announces earnings trading.

13 So there's two ways to interpret this. It could
14 be that Mr. Khalupsky is saying, Well, you missed the cutoff
15 because you didn't know what was coming down the pipe. You
16 weren't aware of these earnings tradings so they didn't
17 trade properly, and they're sending out more information.
18 Or you could look at it and you could say, Huh? Why is
19 someone named Anton Ivanov who has created an email address
20 on October 6th suddenly sending out emails to Pavel Dubovoy
21 who is passing them on to this person, positive?

22 And, ladies and gentlemen, if you look at the
23 series of emails, and we'll try to get them up, you can see
24 that there's an email from Sasha Ledovskiy with his phone
25 number and it says, Respectfully, Alexander Ledovskiy. And

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1 I think you can see another one where, Respectfully,
2 Alexander Ledovskiy. And then all of a sudden you get this
3 one from Anton Ivanov, and that's the name, but it ends up,
4 Respectfully, Sasha. So, ladies and gentlemen, I'll put it
5 to you that Arkadiy and Pavel got to Mr. Ledovskiy,
6 convinced him somehow to become part of their scheme, and
7 Mr. Ledovskiy decides that he needs to adopt a persona, a
8 false name, a false email address to be working on this.
9 And I would ask you to compare it with Mr. Khalupsky.
10 Mr. Khalupsky put his driver's license on the trading
11 authorization. Mr. Khalupsky uses his email. Mr. Khalupsky
12 identifies where he wants his bills sent. And at the end of
13 this relationship, Mr. Khalupsky puts together an accounting
14 to tell Arkadiy Dubovoy how much money he's owed from the
15 time when they were thinking about going into business with
16 each other. If there's somebody trying to hide, it's not
17 Mr. Khalupsky.

18 The reason, again, that I'm pointing out these
19 lies is to ask you to take a second look when the Government
20 says, Oh, you can believe this because Arkadiy told you
21 this, or You can believe this because Igor told you this,
22 what I'm trying to do through all of this evidence is show
23 you that, you can't; and that the Government shouldn't have;
24 and that those people should never have been permitted to
25 testify because it was quite clear, they had no intention of

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1 telling the truth.

2 And then we get to Mr. Garkusha, Mr. Yes Sir/No
3 Sir. Mr. Garkusha said that he met Mr. Khalupsky once,
4 probably the only truthful thing he said on the stand
5 because he stood up and he couldn't identify Mr. Khalupsky
6 in court. It was pretty dramatic. He stands up. He's
7 looking around. I think he was scoping you guys out to see
8 if Mr. Khalupsky was over here. But he finally admitted
9 that he couldn't identify Mr. Khalupsky, which is not
10 unusual for a onetime meeting. But then on
11 cross-examination again, he hadn't provided a financial
12 accounting. He hadn't done anything to show how much money
13 he's involved in, and he's suddenly claiming, Oh, that's --
14 that 50 percent that Arkadiy's given me credit for in
15 Financial Exhibit A, that's not me.

16 But look at some of these e-mails that are setting
17 up these accounts, and I think you're going to see that
18 Mr. Garkusha is up to his eyeballs in this scheme. I mean,
19 the Government can't have it both ways. If Arkadiy can't
20 set up his own account, he can't set up his own account.
21 But if you look at the accounts, and in every single one of
22 Arkadiy's accounts his best friend is Rudik, and who
23 testified that his best friend was Rudik? It was
24 Mr. Garkusha. Mr. Garkusha's been involved in this right
25 from the start. Maybe he wasn't trading or maybe the

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1 Government just couldn't find out where he was trading from
2 or the account he was trading from. But don't decide you
3 can suddenly rely on Mr. Garkusha's testimony as to any part
4 of truthfulness in this case.

5 I would like to go on to the Government's
6 witnesses, and then I'm sorry I will try to speed this up.
7 Ladies and gentlemen, we had witnesses from the Government
8 who talked about someone in charge, and I put it to you that
9 there's a problem with those witnesses. Not a problem with
10 credibility. There's a problem with accuracy. Those
11 witnesses either don't care or aren't competent, but there
12 were a number of witnesses who got up here and testified as
13 to summaries that weren't correct. And you found that out
14 on cross-examination.

15 You heard from a Government witness, the first
16 Government witness, Katie Pierce, and she's a case agent,
17 and she is testifying about time stamps on the press
18 releases that she found in the documents. That she's
19 saying, Oh, the time stamp on that press release is the
20 distribution time. Well, then, you heard from the Factiva
21 witness, and she's saying, Well, that's not really the
22 distribution time. That's the time stamp we've given at
23 Factiva. And it's not a big deal, but it's a disregard for
24 what's true. Why doesn't Agent Pierce just say, Look, I
25 don't know. I don't know what the time stamp is. I have no

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1 information about that, and let the Government bring in
2 Annabel Tierney, I think was her name, who can talk about it
3 and say, Yeah, no, I work at Factiva. These are our time
4 stamps. And there may only be a minute or a second between
5 them. But the problem here is accuracy. You have to be
6 accurate when you're testifying. You can't convict someone
7 on sloppy work, on almost none on close enough or good
8 enough, it's got to be accurate.

9 And I think Dr. Canjels he was another one. He
10 put up -- and I don't think we -- have we got his slides?

11 He put up this slide, initial slide that shows the
12 investment. It showed the profit. It showed the rate of
13 return. But that wasn't a truthful -- or not even a
14 truthful explanation. It wasn't a clear explanation. It
15 left the fact that this was profit on borrowed money. It
16 wasn't the fact that this rate of return was so high because
17 it had been margin accounts. Why do that? If you are
18 convinced that what you're telling people is accurate; if
19 you're convinced that you've got the numbers, why not
20 explain what those numbers really mean? And then the
21 conclusion on the chart that Ms. Nestor raised, on direct
22 examination that was presented to you as evidence of a long
23 window. Oh, this is so bad. This is so much that proof
24 that our paper -- look at that. That trade started on
25 October 21st and that trade didn't stop until the end of

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1 normal business hours on the 23rd and then right away, they
2 sold. So this is all evidence that they went in there right
3 after the press release was uploaded. And this is evidence
4 that they hold onto that stock for three days or two days
5 and didn't sell it until after the press release had been
6 issued. Well, on cross-examination, because that's not a
7 long window, it's a weekend.

8 And Ms. Nestor today got up here and told you, Oh,
9 this a Friday trade. Well, that wasn't the testimony on
10 direct. She didn't say, We screwed up. Sorry about that.
11 It's not a long window. It's really a Friday trade. She
12 just sort of slips that in and doesn't correct the
13 misapprehension.

14 And Dr. Canjels, it's like -- I'm cross-examining
15 him, and I'm saying, You're this isn't a long window? Oh,
16 yes. I'm like, Well, would it surprise you to learn that
17 it's actually a Friday? And immediately he's like, Oh,
18 yeah. I don't need to see the calendar. What do you mean
19 you don't need to see the calendar? You put this document
20 together. You're using this as evidence in court to send a
21 man to jail, and you aren't willing to say, Yeah, well,
22 maybe I noticed it a couple days ago, so I'm not going to
23 fight you on this date.

24 Wait? What's going on here? If you have respect
25 for your work, don't you think -- show me the calendar. And

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1 then when I show him the calendar say, My bad. Sorry. But
2 just not even want to see the calendar to immediately give
3 it up that he's wrong about the date? I think that tells
4 you something about what's going on in this case.

5 And there's been a host of testimony about the
6 P Value and the relationship to trading time and all this
7 other stuff. And if you look back through the evidence, the
8 P Value is just a relationship that's from two variables to
9 show that the relationship is not random. So they took the
10 variables of the upload time and they compared it to the
11 variable of the trading time. And, yeah, they did a
12 statistical analysis and it doesn't appear to be random.
13 But, ladies and gentlemen, it doesn't -- the question
14 doesn't stop there. Okay, so maybe they're not random, but
15 you don't look at the wider world. If you don't know what's
16 going on in the stock market as a whole, how do you know
17 that this had even been needed? Because if you got in the
18 stock market, if everybody -- or if the majority, the volume
19 of the trading is right after -- or right before the market
20 closes, in that hour, well, then, the majority of those
21 trades are going to be executed after the upload time. And
22 if you're not looking at what's happening in the market as a
23 whole, you don't know that. Now, that's not our defense in
24 this case. But look at what kind of evidence you're being
25 presented. Why aren't they looking at the bigger world?

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1 Why aren't they trying to tell you, Look, we're confident
2 about this because it's not holding up in the wider world.
3 We looked at all of the stock markets traded in Lstar. And
4 you know what? They didn't follow this pattern at all. But
5 that's not what they did. They're trying to make it look
6 like it's all statistical and means something, when, in
7 fact, it doesn't.

8 And then there's Agent Preis, and that one, again,
9 where Ms. Nestor today is commenting on it in her summation
10 and not even acknowledging that that summary chart was
11 wrong. Agent Preis got up here, and I think it was 6002,
12 and he testified and he said, Oh, you know, you can look at
13 these two first trades. I think we through the first one
14 and the second one, and he's saying, Oh, there's no other IP
15 activity in this address. And then you just pull up the
16 documents that they got from the brokerage account that
17 shows that there had been other IP activity in that account.
18 And I just -- why would you say that? Why would you put
19 that document in evidence in court? And why would you stand
20 up and then say, Well, you know, for those there were some,
21 but, you know, let's go on to the rest?

22 Ladies and gentlemen, you've been told that there
23 are voluminous records in this case, and you've been told,
24 Oh, here we're going to give you a summary chart to make
25 everything easy for you so you don't have to dig into the

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1 voluminous records. But we've shown you time and time again
2 that you couldn't trust these summary charts; that you have
3 to go back to the voluminous records to double-check the
4 work that the Government's been doing. And, ladies and
5 gentlemen, if you have to double-check that work, if what
6 they're telling you isn't accurate, then you can't use that
7 information. You can't trust that information. You
8 definitely can't use it as evidence of proof beyond a
9 reasonable doubt.

10 And Mr. Preis, they had him talk about IP
11 addresses and they showed him a chart, and he's all Yep,
12 yep, yep, yep this shows 195, dot, dot, dot and one, one,
13 four and he talked about, Oh, you know, all of these IP
14 addresses. And look -- look, you see all of these IP
15 addresses, and you can see the dates and you can see it goes
16 back to Odessa. And then if you start asking him about the
17 column, Well, what does the release date mean? I don't
18 know. Isn't that the date that they captured the
19 information to the IP? He says, I don't know. And, yet,
20 that evidence was put in front of you by a witness who
21 couldn't even explain that.

22 And you know what? This is important evidence
23 because if you compare it to the CBT records, which we did,
24 you can see that this is information that this is an IP
25 address that's located in Odessa. It doesn't I appear to be

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1 an IP address that moves. And so if Mr. Khalupsky is in
2 New York and there's trading activity on that IP address in
3 Odessa while he is in New York and is captured every single
4 week in Odessa, well then, ladies and gentlemen, how can
5 Mr. Khalupsky be responsible for these trades?

6 And, you know, they talked about this IP address
7 and they showed you the backs of emails, and they said, Oh,
8 you know, this is evidence in this case. But what we talked
9 about was, Look, you can see the service provider on this IP
10 address. You could see that the server provider for a
11 company named Dolphin was Tenet, and yet, not a single
12 witness could tell you what Tenet was. They couldn't even
13 commit like they could with UKR, that it was a
14 telecommunications company in the Ukraine. No one did an
15 investigation. No one got on the phone. No one tried to
16 use the Ukraine process to try to get an investigation, try
17 to find out what was going on, to get you more information
18 about this IP address. Is this the IP address that serves
19 multiple uses? How many users? You don't know. Does
20 Dolphin have other IP addresses that were used in that
21 company on different floors? You don't know. Nobody
22 investigated it because it didn't fit in with their theory.

23 And then we come to the devices and the company
24 information. Ladies and gentlemen, I'm not trying to tell
25 you that this hack didn't take place, and I'm not telling

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1 you that those companies weren't victimized. But what I am
2 trying to tell you is you can't meet a link from those
3 companies being hacked and those companies being victimized
4 to Mr. Khalupsky. Now, the Government is trying to tell you
5 that you can, but let's look at other evidence in this case.
6 You know that Mr. Khalupsky entered into a trading
7 relationship with Mr. Dubovoy, and you know that that
8 started in August of 2011. And you know that Mr. Khalupsky
9 had Mr. Dubovoy sign a trading authorization agreement,
10 which someone who had passed all of his FINRA exams would
11 know it is necessary to have someone authorized to trade in
12 your account. And if you look in the account record, I
13 think it's 1008-5, you saw the trading authorization for
14 Igor Dubovoy in the same account. And they weren't
15 identical. Mr. Khalupsky's is much, much shorter, but if
16 you looked at it, there was important information like
17 indemnification, warning someone about losses that was
18 similar in both of the documents.

19 Page down on the page. I'm sorry. We're a little
20 behind that, a little behind the ball on getting -- but
21 anyway, it gives you information about why trading
22 authorization was necessary. It's necessary to protect the
23 brokerage. It's necessary to protect the trader. It's
24 necessary to protect the account holder.

25 But Patrick Rawley, I think that was his name, he

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1 was the TD Ameritrade representative, and he said it's the
2 account holders' responsibility to get that document in to
3 the account. So Mr. Khalupsky did what he thought he had to
4 do. He put this document together and gave it to
5 Mr. Dubovoy, and while Mr. Dubovoy got one for his son,
6 Igor, he never got one for Mr. Khalupsky. And given the
7 similarity and given the fact that Mr. Khalupsky put his
8 driver's license on the back of it, I don't think there's
9 any issue that if Mr. Dubovoy had tried to present this to
10 TD Ameritrade and they had said, No, it's not good enough,
11 that Mr. Khalupsky would have refused to sign their actual
12 purchase trade authorization.

13 (Pause in proceedings.)

14 MS. WHALEN: So these are e-mails -- sorry about
15 that -- where you can see that Alexander Ledovskiy was a --
16 appears to be assigned to the account at Dolphin.

17 Okay. So you see this first document that Pavel
18 is sending to Arkadiy, and you know it's Arkadiy because
19 it's the Dubovoy 01, talking about risk manager. So
20 Alexander Ledovskiy is explaining what to do. It seems a
21 little odd that he's letting these guys into Mr. Khalupsky's
22 risk management account, but who knows?

23 And then we go to the second, August 24th. The
24 first August 5th, so it appears to be shortly after the
25 trading authorization is signed. The second one is

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1 August 24th. And again, it's odd that Alexander Ledovskiy
2 is giving Mr. Khalupsky's log-in credentials and his
3 password and telling them how to go into this account.

4 And if can you bring it down, you can see that
5 that's from Alexander Ledovskiy to Pavel Dubovoy.

6 And then we go to the Anton Ivanov email.

7 (Continued on the next page.)
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1 MS. WHALEN: And this is Anton Ivanov talking to
2 Arkadiy giving him the same information and signing it:
3 Respectfully Sacha. I didn't hear any testimony that Sacha
4 was a nick name for Anton. I do think we heard testimony that
5 Sacha was a nick name for Aleksander. Mr. Khalupsky never
6 used fictitious e-mails. Mr. Khalupsky never lied about his
7 location or his address.

8 So you've seen evidence that Sacha Ledovskiy has
9 access to Arkadiy's accounts, he appears to also have access
10 to Mr. Khalupsky's workplace, and he's providing information
11 like that to Arkadiy and Pavel Dubovoy, and this is before
12 Arkadiy Dubovoy and Mr. Khalupsky have entered into a formal
13 business relationship. Mr. Khalupsky is sending bills, he
14 reduces them when they're overpaid, he's not keeping anything
15 secret. It doesn't seem on the face of it like a criminal
16 scheme.

17 In early 2013, Arkadiy -- I think it's Mr. Khalupsky
18 asks Mr. Dubovoy to invest in his company, he's asking him to
19 take a 50 percent partnership, and he agrees, I think,
20 initially to pay \$200,000. And in the beginning of January,
21 he sends him information, an e-mail, that he's forwarding from
22 another individual, Aleksander Fedchenko, talking about the
23 expenses of the office, who's on salary, what do you have to
24 pay for the rent, what do we have to pay for the brokerage
25 accounts, pretty straight forward information that you provide

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3163

1 to someone who is becoming a partner. And then after that,
2 Mr. Khalupsky sends different bills to Arkadiy, and the bills
3 show a percentage -- it shows information of money being paid
4 out to the guys, okay, and if we go -- do we have the
5 original? Because I think you heard testimony that Arkadiy
6 calls the guys his hackers, he calls them potsani. But in
7 this case, Mr. Khalupsky is referring to his guys, his
8 traders, as rebayti. He's not using the same language that
9 Arkadiy Dubovoy uses. There's no reason to assume that these
10 are hackers. He's paying the individuals in his company a
11 percentage of the profit, the same way he detailed that he
12 pays his employees in his account in his initial e-mail to
13 Arkadiy Dubovoy of January 2015. Now, Arkadiy Dubovoy tried
14 to say: Oh, these are payments to hackers, but, as I've said,
15 you can't believe anything that Arkadiy Dubovoy says. And
16 then the government is making a lot of the fact that at the
17 end of 2013, you get Exhibit 323, and that's the Oracle report
18 that's seen on a computer that Mr. Khalupsky is taking
19 pictures of, and they've got those pictures into evidence.
20 He's got the big screen shot, and then you can see there's a
21 bunch of smaller shots of the entire report. And the
22 government's saying: Oh, this is evidence that Mr. Khalupsky
23 is involved in the hack -- with the hackers. Ladies and
24 gentlemen, what I would tell you is, this is evidence that
25 Mr. Khalupsky found that someone in his firm was trading on

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3164

1 stolen information. You don't know where that computer is,
2 you don't know the location of that computer, you don't know
3 the time of that computer, it's in English, but as the agent
4 testified to, that can be a language pack.

5 So, ladies and gentlemen, if we're going to put up
6 theories, why don't we put up the theory that Mr. Khalupsky
7 suddenly found this on a computer in his office, sort of
8 recognized it but the format looks funny, so took pictures of
9 it and sent it to himself to figure out what was going on.
10 And if you look at what happens after that Oracle report, you
11 will see something very interesting. In the trading data,
12 nobody trades on the Oracle report. You look at all of the
13 trading data you've got, nobody trades on this report. It
14 could be because it's a bad report, it could be because it's a
15 good report, but, as you know, none of the government's
16 experts were asked to look at any individual reports, and I
17 think that's a little bit odd, because if your whole theory
18 is, oh, this guy is getting the stolen report, we want to, you
19 know, show you that he's got these, well, wouldn't you want to
20 know what that report says and say, look, see, it's a terrible
21 report and nobody traded on it. Or do you not want to know,
22 because maybe it's a really good report and Mr. Khalupsky
23 didn't trade on it. And instead, what Mr. Khalupsky did in
24 2014, February, is dramatically changed the trading strategy
25 that was being used in the Merrill Lynch account. So before

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3165

1 November -- I think if you look in the account, there's
2 trading in October, then it's dead in November, it's dead in
3 December, and then, I think, it's dead for most of January,
4 and then it picks up in February. And in February, I think it
5 was Dr. Canjels agreed, the trading changes. It's not day
6 trading anymore; it's trading on the Standard & Poor index,
7 and it's trading on Coca-Cola, and it's not doing three-day
8 window trades, it's holding onto things to see what happens.
9 And if you look, it turns out to be fairly successful. It's
10 not outrageously successful, but it's profitable. And you
11 will see there are other trades in there, but you don't know
12 who is doing those other trades because, as you can see,
13 people in Georgia, like Igor Dubovoy, had access to these
14 accounts. But the trading changes in 2014. Now, Arkadiy
15 Dubovoy said right from the start he knew this was a terrible
16 relationship with Mr. Khalupsky. He knew he wasn't going to
17 make any money, he knew the place was running with debt. "Oh,
18 this is terrible. This is terrible. I'm going to get out of
19 it. I'm going to get out of it."

20 Well, supposedly, for knowing right away that this
21 is a bad deal, he waits until the beginning of 2014 to
22 terminate the relationship, and you see that there's an
23 accounting in April of 2014 between Arkadiy Dubovoy and
24 Mr. Khalupsky. Mr. Khalupsky is treating him like it was a
25 legitimate business deal. He's saying: Okay, you invested

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1 200,000, these are the payments that you made in the meantime,
2 he figures out what the profit on the trading is. You can see
3 he includes the SPY and the Coca-Cola, and then he tells you
4 what he has to pay the broker, "I think it's the platform,"
5 and then the guys, the rebiatomi -- and look at the
6 translation, because that word is -- look at the -- you want
7 to look at the potsoni e-mail from Arkadiy, because even
8 though that kind of looks like a "P," it's not. And he gives
9 an accounting: "This is your share, this is my share, this is
10 what goes to the guys." And then he comes up, he's saying:
11 "Okay, you are getting half. I'm deducting all of the money
12 that you've sent me." He comes up with a debt of 11,384 at
13 the bottom. And then you see two numbers after that -- I'm
14 sorry. You see two additional numbers after that, 40,000 and
15 20,000, and probably the only truthful thing Arkadiy Dubovoy
16 said is that after he had this accounting and Mr. Khalupsky
17 was telling him what he owed him, he got a call a few days
18 later and said, wait, I forgot two additional debts and he
19 added them in.

20 Does this like look an illegal relationship? If
21 Mr. Khalupsky is involved in this, if Mr. Khalupsky knows
22 what's going on, why isn't Mr. Khalupsky saying: Yeah,
23 whistle for your money, hit the highway, I'm not paying you
24 back. What are you going to do? Go to the cops?

25 But instead, he's treating it like it's a legitimate

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1 business.

2 Ladies and gentlemen, I think what the evidence
3 shows is that he realized someone is trading on illegal
4 information. He changed the trading the way that account is
5 traded. Mr. Dubovoy didn't want any part of it, fine, they
6 terminate their relationship. And after that, Mr. Khalupsky
7 really isn't involved with him. He stays in contact a little
8 bit with Arkadiy because he owes him the debt, they have a
9 meeting, they talk about their families. Mr. Khalupsky isn't
10 trying to run from this. But ladies and gentlemen, he's also
11 not going to advertise that he's been tricked, that he's been
12 conned, that one of his employees has probably violated the
13 rules of trading. And PR Newswire didn't alert the wire world
14 that they had been hacked and that information had been
15 stolen. We didn't hear evidence that Marketwired notified
16 everybody that they had been hacked and all of their business
17 information had been stolen. Business people want to keep
18 these things quiet. Mr. Khalupsky is not going to advertise
19 that this happened. He may not know exactly who is involved
20 in this, and so he's not going to start throwing stones, but
21 if Arkadiy Dubovoy wants to terminate the relationship, let's
22 terminate the relationship, I'll pay you the money I owe you
23 as soon as I get it, and that's what I think the evidence
24 shows.

25 And if you look -- I'm sorry, we don't have them up,

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1 but if you look at the Alexander Ledovskiy e-mails through
2 Arkadiy and Igor, you start seeing that in later 2014, that's
3 when they start sending him money, and that's, I think, the
4 end of April 2014 is when they set him up in the M & I
5 interactive broker account where they deposit \$1.8 million.

6 So I think there's a pretty clear, straight forward
7 trail that Sacha Ledovskiy was the person who was trading,
8 that Sacha Dubovoy was -- or Sacha Ledovskiy was the person
9 who was trading, that Sacha Ledovskiy was the person in the
10 lead with the Dubovoy's, and that the Dubovoy's continued to use
11 him until the very end.

12 Now, the government may stand up on rebuttal and
13 say, that's pure speculation, that's circumstantial evidence,
14 that doesn't line up. But, ladies and gentlemen, I put it to
15 you that it makes just as much sense as the story that they've
16 put forward to you, that if there are gaps, if there are
17 things that can't be explained, they are the same kinds of
18 gaps and things that can't be explained in the government's
19 case.

20 And given the lying nature of their witnesses, given
21 the sloppy work of their cumulative reports, I think if
22 there's a tie as to which story should be believed, the tie
23 goes to Mr. Khalupsky and you find him not guilty.

24 Finally, the government, I know, is going to stand
25 up -- they talked about his statement. But, ladies and

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1 gentlemen, that's another piece of government evidence that I
2 really ask you to scrutinize and decide if you can trust. The
3 government's argued that Mr. Khalupsky said he knew the
4 hackers and they were still trading when he was brought to
5 court to be arraigned in this case. But Mr. Khalupsky came
6 all the way from Ukraine, was met by the agents at the
7 airport, never made a statement. Mr. Khalupsky is then taken
8 to the FBI office, processed, fingerprinted, photographed,
9 never made a statement. He's taken to the jail for the night.
10 He's picked up at the jail the next morning and driven to the
11 courthouse, never makes a statement, but minutes before going
12 to see the judge and minutes before seeing his lawyer, he
13 suddenly decides to make this statement. Agent Alexander
14 testified that he didn't take notes, he didn't record what was
15 going on, and I think his testimony was he didn't have
16 anything more to do with this case.

17 And I'm asking you, can you really trust, beyond a
18 reasonable doubt, that Mr. Khalupsky, minutes before seeing a
19 judge, minutes before having an attorney assigned, would make
20 a statement when he hadn't made a statement to the FBI office
21 and he hadn't made a statement at the airport?

22 The last bit of evidence that the government
23 presented in their case before they did their rebuttal, that
24 last bit of evidence was e-mails put in through the case
25 agent -- or not the case agent, Brandon Racz, just an agent on

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1 the case, and he presented -- I think it was a huge pile of
2 e-mails, and some of those e-mails are connecting up to
3 Mr. Khalupsky, some of those e-mails are between Pavel and, I
4 think, Fedchenko. Ladies and gentlemen -- and some of those
5 e-mails are from Arkadiy and Igor, so the first thing is,
6 throw out anything from Arkadiy and Igor, an e-mail that
7 wasn't presented through them. And the reason I'm telling you
8 to do that is, if the government didn't present the e-mail
9 through Arkadiy and Igor and it dealt with Arkadiy and Igor,
10 it's because they didn't want Arkadiy and Igor to be
11 cross-examined on that statement. So, clearly, the e-mail, if
12 they were cross-examined, would not lead you to the conclusion
13 that they are trying to spin on it.

14 And, second, the e-mails that had been presented
15 from Pavel and Positive 1, and Ms. Nestor ran through some of
16 them this morning, look at the dates on those, look at the
17 times on those. They are trying to show a pattern through
18 e-mails that took place over a year. They'll show an e-mail
19 from 2011 and say it leads up to an e-mail in 2012. And,
20 ladies and gentlemen, I don't know how you can make that
21 assumption, but also you are not seeing a response from
22 Mr. Khalupsky, and you know that there are hackers in this
23 case, and you know that those hackers have been able to
24 infiltrate other kinds of security e-mails. I would just ask
25 you to take it all with a grain of salt, and if you need a

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1 spin, if you need to be told what this e-mail means based on
2 testimony from Arkadiy or Igor or Garkusha, then I think you
3 know to ignore it.

4 With the Oracle report, one other thing, the
5 government keeps talking about the Oracle report and they keep
6 trying to link it to the hackers, but the computer that was
7 showing the Oracle report, the date on that was 2013. And the
8 hackers' computers, the ones that were investigated where they
9 found all of this information, those were seized in 2012. How
10 can they be connected?

11 Ladies and gentlemen, the evidence in this case is
12 that Mr. Khalupsky is an honest businessman. The evidence in
13 this case is that he sends out honest accounting, he keeps
14 track of his money, he's not trying to hide, and the evidence
15 is that he was taken advantage of by the Dubovoys. And if the
16 Dubovoys can trick prosecutors, what chance did Mr. Khalupsky
17 have? Mr. Khalupsky didn't close his eyes to anything. He
18 didn't ignore anything that was evidence of wrongdoing. The
19 Dubovoys tricked him just like they tricked the prosecutors.

20 Ladies and gentlemen, I think you can see from this
21 case that the Dubovoys have an inner circle of people they are
22 protecting. For whatever reason, they don't want to give up
23 Sacha Dubovoy -- or Sacha Ledovskiy, they don't want to give
24 up Arthur Bumburyak, but, ladies and gentlemen, if you look in
25 the money records, if you look at Defense Exhibit EEE, which

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1 is the culmination of Agent Levanti's review, you will see
2 payments going to Arthur Bumburyak, you are going to see
3 payments going to Sacha Ledovskiy. But Mr. Khalupsky is on
4 the outside of this inner circle. Mr. Khalupsky is someone
5 that they saw as a chump from the start. He was thinking they
6 were interested in earnings trading, he's sending them bills,
7 he's sending them earnings calendars. They must have just
8 been laughing themselves silly whenever they got those
9 e-mails. There's no question that they would give
10 Mr. Khalupsky up the minute they were arrested.

11 Now, Mr. Tucker, as I said, is going to have a
12 chance to rebut. He may respond to some of my arguments. I
13 would ask you to think how I would respond back. And if he
14 brings in new arguments that he hasn't made before that
15 Ms. Nestor didn't make earlier, think of how Ms. Felder and I
16 would have responded to those.

17 The government has the burden of proof here. They
18 may stand up here and say: Oh, we take our witnesses as we
19 find them; we are not on trial.

20 But, ladies and gentlemen, the government has the
21 burden of proof. They have to meet it with reliable evidence.
22 They don't need it when they present you with lying
23 cooperators and shotty work on their own case. Proof beyond a
24 reasonable doubt is a very, very high standard, but, ladies
25 and gentlemen, if your brother was sitting where Mr. Khalupsky

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1 is, if your sister was sitting where Mr. Khalupsky is, if your
2 best friend was sitting where Mr. Khalupsky is --

3 THE COURT: Ms. Whalen --

4 MS. WHALEN: -- you would want to hold them to their
5 burden. There's no conspiracy here; there's no meeting of the
6 minds. Mr. Khalupsky thought this was a legitimate business
7 relationship. He thought he was being hired to trade in
8 legitimate business accounts, and because there's no evidence
9 in this case, you have to find him not guilty.

10 Thank you.

11 THE COURT: We'll take a short break. Very short
12 break. We'll be right back. Don't discuss the case.

13 THE COURTROOM DEPUTY: All rise.

14 (Jury exits.)

15 THE COURT: To remind you folks, on the defense side
16 of the aisle, if you --

17 MR. TUCKER: I'm so sorry, Judge. I can't quite
18 hear you.

19 THE COURT: To remind you, we need the defense to
20 submit one, a charge on the defense theory of the case.

21 MR. GOPSTEIN: Your Honor, we had discussed
22 yesterday getting a ruling on an additional instruction prior
23 to rebuttal, specifically with regard to government
24 investigations, and I think that there can be little doubt
25 after the summations that that instruction is appropriate, as

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1 well as I would submit an instruction that's been affirmed by
2 the Second Circuit, which is that the government is not on
3 trial. I think that's been placed squarely at issue during
4 the summations.

5 THE COURT: The first one, I have no difficulty
6 with. I will include it.

7 MR. GOPSTEIN: Thank you, Your Honor.

8 MS. BRILL: Your Honor, how do we submit the theory
9 of the case?

10 THE COURT: I'm sorry?

11 MS. BRILL: What is the best way to submit to you
12 the theory of the case?

13 THE COURT: You can e-mail my law clerk, but do it
14 tonight.

15 MS. BRILL: Yes.

16 MS. FELDER: Your Honor, I do have a hard copy
17 available now for the Court's review for Mr. Khalupsky.

18 THE COURT: Let me see it.

19 MR. TUCKER: Your Honor, I expect to use the
20 document camera. I'm going to, sort of, one-man-band this, so
21 if I can get maybe the lapel mic.

22 THE COURTROOM DEPUTY: Sure, I can help you with
23 that.

24 MR. TUCKER: I will obviously keep my voice up, but
25 the microphone would be helpful, if that's all right.

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1 MS. WHALEN: I think I left it on the podium.

2 THE COURTROOM DEPUTY: I have it. No worries.

3 THE COURT: Well, it's a little wordy, and I'm not
4 quite sure I like the way it's phrased, but the substance of
5 it doesn't concern me.

6 MS. FELDER: Thank you, Your Honor.

7 THE COURT: I don't think it's my duty to instruct
8 them, quote, "Mr. Khalupsky was not engaged in conspiracy to
9 commit wire fraud.

10 (Reporter requested clarification.)

11 THE COURTROOM DEPUTY: The court reporter didn't
12 hear you.

13 THE COURT: I'm sorry. I was saying, somewhat
14 facetiously, to counsel that I don't think it's my
15 responsibility to instruct the jury, for example, quote,
16 "Mr. Khalupsky, who was not engaged in any conspiracy to
17 commit wire fraud, securities fraud, and simple computer
18 intrusion, or money laundering."

19 I realize it's being presented as the defendants'
20 contention, and it will be couched in those terms.

21 MS. FELDER: Thank you, Your Honor.

22 THE COURT: Tell me when you are ready.

23 MR. TUCKER: Thirty more seconds, Your Honor.

24 THE COURT: I'll be back in one minute.

25 (A recess in the proceedings was taken.)

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1 THE COURT: Let's go.

2 (Short pause.)

3 THE COURTROOM DEPUTY: All rise.

4 (Jury enters.)

5 THE COURT: I think we are missing --

6 MS. FELDER: He just went to the restroom.

7 THE COURT: Please be seated, everyone.

8 Mr. Tucker, just a second.

9 MR. TUCKER: Of course, Your Honor.

10 (Continued on the following page.)

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1 (In open court; jury present.)

2 THE COURT: Somebody has gone after him?

3 MS. WHALEN: Yes, yes, Your Honor.

4 (Pause in proceedings.)

5 THE COURT: All right. Mr. Tucker, whenever you're
6 ready.

7 MR. TUCKER: Thank you, Your Honor. Ladies and
8 gentlemen, I want to thank you for all your time and attention
9 today. I know it has been a long day and you've sat through
10 three long attorney addresses already. I can say at the
11 outset, my comments to you will be much shorter. Because the
12 government has the burden of proof in this case, we have an
13 opportunity to speak with you one last time to address some of
14 the arguments that defense counsel have raised, so I'm going
15 to endeavor to respond to some of those arguments now.

16 What I'm telling you, ladies and gentlemen, that
17 much of what you've heard this afternoon boils down to an
18 effort to shift blame and to distract you from the important
19 work that you have to do in this case. It was an effort to
20 touch upon your emotions by referencing their family members,
21 it was an effort to distract you from the criminal conduct
22 that the evidence shows that these two defendants have engaged
23 in for more than four years. Instead of talking about that
24 evidence, the defense lawyers that you heard from this
25 afternoon tried to blame everybody but their clients for what

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1 you've heard about during this case. Blame the prosecutors,
2 blame the agents, blame the SEC, blame the Secret Service,
3 blame the Dubovoy's, blame anybody besides the two defendants
4 in this case. The idea is to turn your attention away from
5 what you need to focus on. I don't say this to be negative,
6 everybody has a job to do in this case, I think all the
7 defense lawyers on both teams have done a good job
8 representing their clients, that is their job, to advance the
9 best arguments that they can make for you to consider.

10 I'm going to focus you back on the evidence now,
11 because it is the evidence that controls. It is the evidence
12 that you must consider in deciding whether the government has
13 proved its case against Vitaly Korchevsky and Vladislav
14 Khalupsky beyond a reasonable doubt. Let's talk about the
15 evidence.

16 Now, what was helpful, I submit, from the defense
17 arguments that you've heard, is they have narrowed the issues
18 in dispute in a way that wasn't necessarily readily apparent
19 throughout the course of this trial. You now know that both
20 defendants concede that the newswire companies, PR Newswire,
21 Marketwire and Business Wire were all targeted by hackers and
22 all had their press releases stolen. There seems to be no
23 question about that and I should make clear the evidence in
24 this case establishes that clearly.

25 Also, it seems that there is no dispute that the

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1 Dubovoys had access to the stolen, hacked press releases. But
2 this is where the defense starts to get into trouble. Now
3 both defense lawyers that you heard from, Mr. Brill and
4 Ms. Whalen, advanced alternate theories, alternate suggestions
5 about what the facts and evidence in this case show. I should
6 make clear, of course, as you know, that the defense has no
7 burden here whatsoever. This is the government's burden, we
8 embrace it, we have to prove our case beyond a reasonable
9 doubt. But they proffered alternate theories to explain the
10 massive amounts of evidence that the government has presented
11 against both of these defendants and I submit to you, ladies
12 and gentlemen, those theories make absolutely no sense.

13 I want to start with Mr. Khalupsky's theory. Again,
14 as Judge Dearie explained, what I say is not evidence, what
15 the defense lawyers say is not evidence, and if I
16 misapprehended what Ms. Whalen was driving at or what
17 Mr. Brill was driving at, you'll forgive me, but what I
18 understood Ms. Whalen's argument to be was that Vladislav
19 Khalupsky had some kind of legitimate trading relationship
20 with Arkadiy Dubovoy, and others at Dolphin Trading those were
21 the ones who had access to the stolen press releases and were
22 trading upon them.

23 Ladies and gentlemen, that argument makes no sense.
24 Remember what the evidence shows here about what the Dubovoys
25 did and, again, I don't think this is in dispute. Arkadiy

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1 Dubovoy and Pavel Dubovoy and later Igor Dubovoy exposed
2 themselves to great risk and paid large sums of money to gain
3 access to these hacked press releases. For you to believe
4 this argument that Ms. Whalen has advanced and Mr. Brill,
5 because I believe the argument is essentially the same with
6 respect to Vitaly Korchevsky that, yes, he was trading in the
7 Dubovoy's accounts, but he also didn't get access to these
8 stolen press releases. To believe these defense theories you
9 have to believe that the Dubovoy's obtained these press
10 releases and then ignored them and instead entered into
11 legitimate relationships with Vitaly Korchevsky and Vladislav
12 Khalupsky. Now, ladies and gentlemen, Arkadiy Dubovoy and
13 Igor Dubovoy, I think it was clear in this case, these guys
14 are about making money. It makes no sense, it doesn't make
15 sense that they would spend this time and this money and
16 expose themselves to so much risk to get stolen press releases
17 and then not use them.

18 Now, you also have to believe with respect to
19 Mr. Khalupsky that others at his company, Dolphin Trading, did
20 have access to these stolen, hacked press releases, but
21 somehow he didn't know until -- and I'm going to come back to
22 this -- he saw that Oracle press release on December 18th,
23 2013. And you somehow have to believe that Vitaly Korchevsky,
24 despite the fact that he, like Mr. Khalupsky, is a
25 sophisticated trader, holding FINRA certifications, that

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1 somehow or other for years he was getting tips or guidance
2 from the Dubovoys but he didn't understand what was going on.
3 And again, ladies and gentlemen, it just doesn't match up with
4 the evidence. Not only does it seem completely untethered
5 from common sense, the evidence contradicts the theories.

6 Now, Ms. Whalen made the argument that the
7 government has presented no direct evidence of Vladislav
8 Khalupsky's guilt and, ladies and gentlemen, I submit to you
9 that is simply not true. I'm going talk about the Oracle
10 press release for a moment, this press release that you've
11 seen many times. Let's be clear on the facts here. On
12 December 18th, 2013, Vladislav Khalupsky emailed himself seven
13 different screenshots of a pre-distribution press release.
14 You should look at these exhibits, ladies and gentlemen. This
15 364-1, the entire series, and Government's Exhibit 323. He
16 sent them to himself. These were all pre-distribution. The
17 emails were sent prior to the press release becoming public.
18 And Ms. Whalen stood before you and argued that this was
19 Mr. Khalupsky's reaction to the discovery that someone in his
20 company was trading on stolen press releases. Ladies and
21 gentlemen, that makes absolutely no sense, and you know that
22 it doesn't.

23 First off, remember, as it was made clear during the
24 trial, all seven of these Oracle press release images were
25 found in the sent folder of Mr. Khalupsky's Gmail account. So

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1 he emailed them to himself from Gmail to Yahoo, but he deleted
2 these emails in his Yahoo account. So, first off, it makes no
3 sense why would he need to send himself seven images, when
4 he's discovered some kind of scheme within his company, why
5 does he need to send himself seven pictures, what purpose does
6 that possibly serve, but even more problematic to this defense
7 theory, he's deleting the emails once they show up in his
8 inbox. Ladies and gentlemen, why is he doing this? It's not
9 because he's made this crazy discovery and he doesn't know
10 what to make of it, he's taking screenshots of the material
11 portions of this press release so he has the information handy
12 so he can make a decision about whether or not to trade. But
13 this time Mr. Khalupsky makes a mistake. He remembers to
14 delete the emails from the inbox of his Yahoo account, but he
15 forgets to delete them in the sent folder from this Gmail
16 account. That is the mistake he makes, that is the proof, the
17 direct evidence that Vladislav Khalupsky had access to stolen,
18 hacked, pre-distribution press releases.

19 Ladies and gentlemen, this boils down to a really
20 important point. Our jury system is predicated on the idea
21 that jurors will bring to bear on criminal cases an element of
22 their own common sense. So you have to sit in the jury room
23 and ask yourself, does Ms. Whalen's suggestion about what
24 Vladislav Khalupsky is doing here make sense or what actually
25 makes sense is that Vladislav Khalupsky was a guy who was

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1 engaged in trading on stolen press releases, because that's
2 what Arkadiy Dubovoy wanted him to be doing, because Arkadiy
3 Dubovoy went to the trouble and exposed himself to the risk of
4 obtaining these press releases. This is one example of how
5 Vladislav Khalupsky had access to the press releases. And
6 people were careful. Vladislav Khalupsky was careful. He did
7 try to delete the evidence, he just forgot it in his sent
8 folder.

9 This was clear, I submit, through all the testimony
10 from cooperators and others in this case, there were many
11 efforts to conceal and destroy and delete evidence because
12 everybody understood that if you got caught red-handed with a
13 press release the game would be over and that's exactly what
14 happened here. That is direct evidence that Vladislav
15 Khalupsky had access to the stolen press releases, as it is
16 his statement to the agent, Agent Alexander. Ladies and
17 gentlemen, I don't disagree with Mr. Whalen, you should
18 consider that statement carefully, but should also consider
19 the statement that you heard from Agent Alexander. You should
20 think about the circumstances and the details and the nature
21 of that statement and see if it matches up with the other
22 evidence in this case, evidence like the seven images, the
23 Oracle press release that you saw in Vladislav Khalupsky's
24 email account.

25 There is other direct evidence. I'm going to ask

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1 Mr. Gopstein to help me a little bit here, I'm not going to
2 show you a lot of documents, I don't have a PowerPoint
3 presentation here today, I'm sure you'll be devastated to
4 know, but there are many instances, and Ms. Nestor went
5 through some of them in her summation, where you saw user
6 names and passwords, log-in credentials that would allow
7 Vladislav Khalupsky and Vitaly Korchevsky to access the
8 servers on which those stolen, hacked, pre-distribution press
9 releases appeared. And this is an example, this shows you one
10 of those passwords and user names. This is an email from
11 positive1 to Dubovoy. And this is Government's Exhibit 366.
12 Take note of that password for a moment, and then I'm going to
13 ask Mr. Gopstein to show the next email which is Government's
14 Exhibit 253T. This is an email from Pavel Dubovoy to Vlad
15 Odessa, that's Vladislav Khalupsky receiving, I submit to you,
16 ladies and gentlemen, a password to the Stargate email account
17 on which he was going to be able to see and trade upon stolen
18 press releases. And note how similar those passwords are.

19 Ladies and gentlemen, this is an important point,
20 and one of things you may have seen when we saw those
21 extracted files from the Ukraine media, as we call it, the
22 images 4A and 6B, warninggp's computer, we fortunately saw
23 many documents extracted from those computers that showed
24 passwords and user names for employees and customers of
25 newswire services. And we saw -- and you know this from your

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1 own lives, we tend to use the same types of passwords. Maybe
2 it's a birth date of a loved one or a particular word or a pet
3 name, what have you. Hackers aren't that different, ladies
4 and gentlemen, they have certain password conventions and the
5 similarity between these two passwords and, frankly, the
6 closeness in dates, August 2011 and May 2012, tell you what
7 this is about. This is Vladislav Khalupsky receiving log-in
8 credentials. Ladies and gentlemen, this is direct evidence,
9 this doesn't require inference, this is proof that he's
10 getting passwords that are nearly identical to passwords being
11 circulated by positive1, who you know is Roma, he's the
12 intermediary between the hackers and the Dubovoys.

13 Just another point before we take this exhibit down,
14 you see this email to Vladislav Khalupsky is sent from Pavel
15 Dubovoy. Now Ms. Whalen made this point that it didn't make
16 any sense to imagine that Arkadiy Dubovoy would meet for the
17 first time with Vladislav Khalupsky and he would offer up this
18 criminal scheme. That's not an unreasonable point, that would
19 be strange, but this is where paying attention to the record
20 is very, very important. And again, I'm not suggesting
21 Ms. Whalen was trying to mislead you, it's a big record and
22 that's why we have the transcripts, and that's why we have the
23 exhibits. But the testimony is clear, that the individual who
24 knew Vladislav Khalupsky first was Pavel Dubovoy. That makes
25 sense. There's already this preexisting relationship and

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1 that's why Pavel Dubovoy is the guy who pushing out log-in
2 credentials to Vladislav Khalupsky.

3 One other point -- I'm sorry, Mr. Gopstein, do you
4 mind putting that up one more time. One other important point
5 about this Stargate email before I move on. Now I'm not going
6 to take you through the Korchevsky iPad evidence again, the
7 salient point you should take away here is this: The
8 government does not contend that Vitaly Korchevsky and
9 Vladislav Khalupsky are, they have a particular business
10 relationship. The point of commonality here are the Dubovoy's,
11 that's true, but you should take into account and consider the
12 significance of the fact that two traders, on opposite sides
13 of the world, there's forensic evidence that both of them have
14 connectivity to that Stargate email account.

15 Ladies and gentlemen, this case doesn't boil down to
16 the cooperators, although I'm going to talk to you about that
17 in a moment, there's forensic here too, and that is
18 unquestionable it is linked between Vladislav Khalupsky and
19 Vitaly Korchevsky. It proves that not only do they know the
20 same center of this scheme, the Dubovoy family, but they're
21 talking about and accessing the same email accounts, because
22 their source of information is the same. And that's really,
23 really important when you think about the fact that these are
24 two guys who have no particular relationship besides that.
25 Thank you, Mr. Gopstein.

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1 I'm going to make a passing reference to venue for a
2 moment. Venue is important, don't get me wrong. Venue, as
3 Ms. Nestor explained, has to be established by a preponderance
4 and she summarized the government's evidence with respect to
5 venue. There's an important point here. Judge Dearie will
6 instruct you on the law regarding venue. You should listen to
7 his instructions carefully. I, respectfully, submit that
8 Ms. Whalen misstated the law with respect to venue.

9 Generally speaking, the character of evidence
10 regarding venue is different for conspiracy charges and
11 substantive charges, but she conflated them. Put very simply,
12 the fact that wires passed through the Eastern District of New
13 York, or that co-conspirators traveled in and out of the
14 Eastern District of New York in furtherance of the scheme, as
15 the evidence shows here, is ample evidence to lay this case in
16 the Eastern District of New York. And, again, you'll listen
17 carefully to Judge Dearie's instructions, this is an important
18 point.

19 With respect to the substantive securities fraud
20 counts, the evidence that makes this case properly brought
21 here in Brooklyn is the evidence that you heard that there
22 were individuals, who on the other sides of these trades, the
23 people, the Dubovoy and Korchevsky and other co-conspirators
24 they were trading with who were, frankly, ladies and
25 gentlemen, victims because they didn't have access to this

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1 inside information that the hackers provided and passed
2 through to the Dubovoy and through the Dubovoy to Korchevsky
3 and Khalupsky. So I urge you to listen to the Court's
4 instructions very carefully.

5 I'm going to talk about the cooperators for a
6 moment. There's absolutely no question that Igor Dubovoy and
7 Arkadiy Dubovoy and Garkusha are criminals. All three of them
8 have pled guilty to their crimes. All three of them have
9 signed cooperation agreements and cooperation agreements,
10 ladies and gentlemen, they are not a truth serum. They do not
11 turn devils into angels. What cooperation agreements do, is
12 they provide very powerful incentives for cooperating
13 witnesses to tell the truth. And, ladies and gentlemen, I
14 submit to you that you saw that play out in court in realtime
15 when Igor Dubovoy was confronted with those altered documents.
16 He admitted to it. Ms. Whalen's characterization of his
17 testimony, I submit, is correct. He was asked the question
18 and he admitted to the conduct, and that should tell you
19 something.

20 Now ladies and gentlemen, I would be foolish to
21 suggest that you should look solely at the cooperators'
22 testimony in this case because there's ample other evidence
23 that on its own proves the defendants' guilt beyond a
24 reasonable doubt, but I, respectfully, submit to you it would
25 be equally foolish to disregard their testimony. Because Igor

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1 Dubovoy and Arkadiy Dubovoy and Alex Garkusha gave you unique
2 insight into sort of the color or detail and the personal
3 dynamics of this conspiracy, which help you understand all the
4 documents and the trading activity and all the other evidence
5 in this case, so you should consider it. But you should
6 absolutely consider all the other evidence.

7 And to take the analogy that Mr. Brill used, I think
8 he's right, he asked the question would you buy a car from
9 Arkadiy Dubovoy or Igor Dubovoy. And I submit to you, you
10 might, not on its own, because you're careful people and you
11 would consider everything, you would do your research, you
12 would look into the background of the car, you would make sure
13 that you did your diligence and that's exactly what the
14 government is asking you to do here. Consider the
15 cooperators' testimony and then consider how that testimony
16 matches up with the other evidence in this case: The
17 documents, the emails, the trading activity. The stuff that
18 the cooperators couldn't possibly alter or make up because
19 it's there, it's objective, extrinsic.

20 Finally, with respect to this idea there was an
21 another trader at Dolphin Trading, I have to just talk about
22 this for a minute. Alex Sasha Ledovskiy. Ladies and
23 gentlemen, as Ms. Nestor said this morning, the government's
24 theory in this case has never been that Vladislav Khalupsky
25 was on his own. As we made clear through the introduction of

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1 evidence and documents, he had people working for him, that
2 was Dolphin Trading, but the idea that somehow he was
3 completely oblivious to what was going on, I submit to you
4 makes no sense. And Ms. Whalen has conjured up, I
5 respectfully submit, this idea that Sasha Ledovskiy, Alex
6 Ledovskiy is in fact the bad guy at Dolphin Trading, it
7 doesn't match up with the documents, with the evidence and it
8 just doesn't make sense.

9 Mr. Gopstein. This is defense -- Khalupsky Defense
10 Exhibit AT. This is a defense exhibit from January 2013.
11 Alexander Sasha Ledovskiy appears nowhere on this document.
12 This is a list of everybody who is working at Dolphin Trading.
13 Where is he? He's not there. Now, there were, I'm certain,
14 guys rotating in and out of Dolphin Trading, but there was
15 only one person that the evidence showed you received the
16 log-in credentials to the server that contains that
17 pre-distribution press releases and, ladies and gentlemen,
18 there was only one person who signed Government's Exhibit 805
19 or was the subject, rather, of Government's Exhibit 805, the
20 trading authorization between Arkadiy Dubovoy and Vladislav
21 Khalupsky. Ladies and gentlemen, that was the guy that
22 Arkadiy Dubovoy wanted to trade on the stolen press releases,
23 that's why he had this agreement. Maybe there were people
24 working for Vladislav Khalupsky, there probably were, but at
25 the end of the day Vladislav Khalupsky is the guy who is the

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1 subject of this trading agreement and Vladislav Khalupsky is
2 the person who Arkadiy Dubovoy is paying, and that's really
3 important.

4 Another point on how Vladislav Khalupsky got paid.
5 Ms. Whalen made a point that these were legitimate business
6 relationships, these were legitimate deals, these were honest
7 accountings. Ladies and gentlemen, ask yourself why all of
8 these payments are made not to any entity called Dolphin
9 Trading, but rather to Carese or to SK Inter Trading, both of
10 which I submit to you are entities through which Vladislav
11 Khalupsky was clearly getting paid.

12 There were some questions on cross-examination where
13 I think Ms. Whalen tried to imply or suggest that maybe it was
14 really hard to have a bank account in the Ukraine so that's
15 why Mr. Khalupsky was arranging the payments through Carese
16 trading, a British Virgin Island company.

17 Ladies and gentlemen, the reason that Vladislav
18 Khalupsky, I submit to you, is having these payments go
19 through Carese or SK Inter Trading is so that there wouldn't
20 be a paper trail that shows the relationship is not on the up
21 and up. That, ladies and gentlemen, is on but not the only
22 example of money laundering in this case. The idea of
23 concealing where money was going to hide its ultimate purpose
24 and to promote the criminality that you've heard about.

25 Ladies and gentlemen, I submit to you that you can

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1 consider and you should consider all of the evidence in this
2 case including the cooperator testimony with respect to
3 Vladislav Khalupsky. But when you look those log-in
4 credentials, when you consider the ways that Vladislav
5 Khalupsky was getting paid and you consider those Oracle press
6 releases, and you consider his statements to the agent after
7 he was arrested, that's proof beyond a reasonable doubt,
8 ladies and gentlemen, that he was a member of this conspiracy.

9 Now, I want turn my attention to Vitaly Korchevsky.
10 Now Mr. Korchevsky argues, through his lawyer, Mr. Brill, that
11 there was no evidence that Vitaly Korchevsky possessed stolen
12 press releases. You never saw, Mr. Brill said, any evidence
13 or any stolen press release that Vitaly Korchevsky possessed.
14 And ladies and gentlemen you know that's not right. You saw
15 145 of them or at least evidence of them. We didn't look at
16 them all. They were the Rupion press releases. These 145
17 unique, pre-distribution Business Wire press releases upon
18 which Vitaly Korchevsky traded.

19 Now it's important to understand -- and one more
20 point before I move past that. Another important concession I
21 submit that was made by defense counsel today was the fact
22 that Vitaly Korchevsky received the log-in credentials for
23 that second email account the Loscal account and the argument
24 raised to you was, sure, maybe Igor Dubovoy sent these log-in
25 credentials -- and let me just show you so you remember what

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1 I'm talking about here. This is Government's Exhibit -- I'll
2 show this one, Mr. Gopstein, Government's Exhibit 417. The
3 fateful log-in credentials for Loscal which were sent to
4 Mr. Korchevsky on March 31st, 2015. And just to back up for a
5 minute, a little recap on Rupion because I think things got a
6 little confused.

7 So the evidence in this case shows you that not Igor
8 Dubovoy but Valeri Pychnenko created a Rupion account on
9 February 11th, 2015. There is a Viber chat between them. And
10 you know from the emails that were extracted from that Rupion
11 account that the first email you find in that account is dated
12 February 19th, 2015. And you also know that on March 31st,
13 2015, the Rupion account sent its first emails, including an
14 email with a new pre-distribution press release to this
15 Loscal@mail.ru account to which Mr. Korchevsky had been sent
16 the log-in credentials. This image, this picture, this
17 Post-it note. And, ladies and gentlemen, I encourage you to
18 take a close look at the government's summary charts on this
19 topic. We spent a lot of time on them, they will be
20 illustrative. For your notes they are 703 and 704.

21 Let me walk you through that day, March 31st, 2015.
22 Now according to Government's Exhibit 415-a1, Igor Dubovoy
23 texted Vitaly Korchevsky this picture at 1:52 p.m. At
24 3:37 p.m. that day -- this is all in evidence. Again,
25 important evidence you should consider, Government's

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1 Exhibit 707B, all the text messages between Vitaly Korchevsky
2 and Igor Dubovoy. At 3:37 that same day, Igor Dubovoy texts
3 Vitaly Korchevsky, will be in five min. And then -- that's
4 3:37, at 3:41, so four minutes later, the SNX press release is
5 sent to the Loscal account. I'm going to ask Mr. Gopstein to
6 put this one on the screen. This is Government's
7 Exhibit 3080. That's four minutes after, Igor Dubovoy faster
8 than he expects. He sends that SNX press release to the
9 Loscal account. Mr. Gopstein, could you just turn to the page
10 to 3080-a1, please. As was made clear during trial, each and
11 every one of the 145 unique press releases that passed through
12 this Rupion account in evidence -- you should absolutely look
13 at them if you like -- this particular press release is a
14 press release for the Synnex Corporation. New York Stock
15 Exchange ticker SNX. They are reporting the first quarter
16 revenue and net income for fiscal year 2015. And you remember
17 the testimony from Mr. Suarez from Business Wire, that header
18 information that's at the top there, that's proprietary news,
19 XML, header information that includes formatting data for
20 Business Wire press releases. That's how you know that's a
21 pre-distribution press release, I submit.

22 Mr. Korchevsky trades on that press release 16
23 minutes later at 3:57 p.m. It ends up in Loscal at 3:41 p.m.
24 Igor Dubovoy texts Korchevsky at 3:48 p.m. "S" which means I
25 am, as he testified it's there and nine minutes -- nine

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1 minutes later Vitaly Korchevsky trades on SNX. Ladies and
2 gentlemen, that's how you know that Vitaly Korchevsky had
3 access to these press releases that passed through the Rupion
4 account. This isn't something that you have to rely on Igor
5 Dubovoy's testimony for, the trading records are in evidence.
6 They show you that Vitaly Korchevsky's trading matched up a
7 staggering rate with the press releases that passed through
8 the Rupion account. Remember the numbers, 135 of the 145
9 press releases that passed through that Rupion account between
10 February 19th and May 28th were pre-distribution.
11 Vitaly Korchevsky traded on 97 of them. He did 104 unique
12 trades during that period. Ninety-seven of them were inspired
13 by these press releases that passed through Rupion. That's
14 how you know he was getting these press releases.

15 (Continued on the next page.)
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1 MR. TUCKER: (Cont'g.) You also know that he's
2 getting these press releases because he texted Igor Dubovoy
3 his coded texts to explain how he's supposed to trade.

4 And you remember this exercise that we went through
5 when Igor Dubovoy was on the stand. This is Government's
6 Exhibit 704.

7 The codes are damming, ladies and gentlemen. They
8 make no sense. There's no innocent explanation for texting
9 somebody something like one parentheses star seven. Three
10 parentheses star five. Four parentheses star three. Those
11 are texts he sends on April 22nd, 2015.

12 Except, if you know the sequence of press releases.
13 And you know that not only from Igor Dubovoy's testimony but
14 because Investigator Bolinder explained to you that he went
15 back and looked at all of the individual trading activity for
16 Vitaly Korchevsky and the Dubovoy accounts during this period
17 and he saw that Igor Dubovoy follows these instructions. And
18 he looked at the sequence of press releases that arrived in
19 Loscal email from the Rupion account and he matched up.

20 He did it in court. You should do again, if you
21 want. But, ladies and gentlemen, I submit to you there's no
22 innocent explanation. This proves to you beyond a reasonable
23 doubt that the Vitaly Korchevsky was receiving these press
24 releases in the Loscal account. We know he had access. He
25 had the login credentials. He certainly didn't text Igor

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1 Dubovoy back after he got it, what's that? There's no
2 evidence that he did that. What did he do? He traded on the
3 press releases that arrived from the Loscal account a couple
4 hours later on that same day. And the evidence shows that he
5 did that time and time again.

6 Now, Mr. Brill raised this point that there was no
7 direct connectivity between the Vitaly Korchevsky and the
8 hackers. Now, that's true. There are no emails between
9 warninggp, for instance, and Vitaly Korchevsky. I submit to
10 you that makes quit a bit of sense for two reasons.

11 One, Arkadiy Dubovoy made it pretty clear that that
12 was his job to handle the hackers, but also Vitaly Korchevsky
13 is a smart guy. He's not going to communicate directly with
14 the hackers. In large part because they don't want him to
15 know what he's doing. He's trading in his own accounts and
16 making enormous amounts of money. But there's evidence that
17 he's getting access to these servers and he's getting
18 information past directly from the hackers. This is just one
19 example, Government Exhibit 219(T). And this will ring a bell
20 because it's that same idea, the same login credentials,
21 another similar password. And this is an email from Pavel
22 Dubovoy to Vitaly Korchevsky in July of 2011 when he is
23 getting sent that same type of password the t133!! Again, no
24 innocent explanation to these types of emails, particularly
25 when you consider the trading activity that you heard about in

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1 this case.

2 Another good point that there is no innocent
3 explanation with respect to Vitaly Korchevsky, ladies and
4 gentlemen, generally is Government Exhibit 484. You've heard
5 a lot about it. This is that cell phone with the 678 prefix,
6 the Atlanta prefix that agents seized from Vitaly Korchevsky's
7 house on the date of his arrest.

8 And I can't make this point strongly enough. This
9 phone, ladies and gentlemen, was dedicated to only one thing,
10 advancing the scheme. Vitaly Korchevsky used this phone only
11 to communicate with the Dubovoys.

12 Think about that for a minute. Is there anyone in
13 your life for whom you've given them a phone dedicated just to
14 communicating with them?

15 Ladies and gentlemen, Igor Dubovoy explained to you
16 why a criminal might do this. It's so that they have a phone
17 that contains their criminal activity. So if they think
18 they're going to get arrested, they have some warning that the
19 authorities are on to them, they destroy that evidence.

20 And by the way, ladies and gentlemen, Vitaly
21 Korchevsky was careful even with this. You heard evidence
22 that the text messages had been deleted. The forensic
23 examiners were able to recover them, which is why you have the
24 benefit of this information. Vitaly Korchevsky, as far as you
25 can tell, this phone's blank. He never imagined that one day

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1 the jury would be looking at the text messages that he sent.
2 He never imagined that one day a jury will be looking at a
3 phone dedicated only to communicating with Arkadiy Dubovoy and
4 Igor Dubovoy and Pavel Dubovoy.

5 Now, Mr. Korchevsky's lawyer spent a lot of time
6 talking about the character witnesses. And I want to say at
7 the outset, and I say this knowing you know it, there's
8 certainly nothing incompatible with the idea that a person who
9 may do some great things in their life also can commit crimes.
10 That's crazy. You know that's not true.

11 But I will also say to you, ladies and gentlemen,
12 that the individuals Vitaly Korchevsky called in to testify on
13 his behalf didn't know him anywhere near as well.

14 Just yesterday you heard from Mr. Sipko. He said he
15 talked to Mr. Korchevsky two, three times a year.

16 Ladies and gentlemen, you've seen evidence that
17 during this conspiracy Vitaly Korchevsky would speak to the
18 Dubovoy's two or three times a day. Two or three times in the
19 space of a couple of hours. They were talking all the time.
20 And that tells you volumes about who Vitaly Korchevsky was.

21 I assure you, ladies and gentlemen, when Mr. Sipko
22 wasn't buying phones or hotspots or computers or calling cards
23 from Vitaly Korchevsky. That was the relationship he had with
24 the Dubovoy's. He chose them as his associates, ladies and
25 gentlemen.

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1 Now, with respect to Slavic Zayats, there's not much
2 to say here. The cross-examination of Mr. Zayats went longer
3 than one might imagine it needed to. His answer that he did
4 not have any business relationship with Vitaly Korchevsky was,
5 I submit to you, surprising, to say the least and obviously
6 wrong.

7 But the reason that that cross-examination occurred,
8 the reason that those facts were elicited is simply to
9 establish a bias. And think about what his bias is. And I'm
10 not suggesting that Slavic Zayats is a bad guy, but just think
11 about his relationship with Vitaly Korchevsky. And, ladies
12 and gentlemen, respectfully it doesn't boil down to the fact
13 he's got a credit card or a couple bucks here and there from
14 Vitaly Korchevsky. The evidence shows that Slavic Zayats and
15 his son Roman had a business because of Vitaly Korchevsky.

16 Put yourself in Slavic Zayats shoes for a moment.
17 If an opportunity came about to help someone who helped your
18 son get a business started when he's 22 years old, what might
19 it be your worth to you? Might you be willing to do a little
20 bit of investigating, maybe explore the curiosity that
21 Mr. Zayats expressed. Go ask some questions? Might you want
22 to have a helpful answer that you could give Vitaly Korchevsky
23 after you did your little bit of investigating.

24 Ladies and gentlemen, one of the most important
25 points here, it holds for all the witnesses in this case, is

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1 you have to consider the biases and the motives that they have
2 and whether they have an incentive to be completely truthful.

3 And, ladies and gentlemen, I submit to Mr. Zayats is
4 not a bad guy. I'm not suggesting that he is. But you should
5 scrutinize his testimony and be very skeptical, not only
6 because of that bias but because does that make sense, that
7 Arkadiy Dubovoy, a guy who theoretically is always keeping
8 people in the dark would be so honestly candid with an
9 impromptu conversation with a guy he barely knows? Ladies and
10 gentlemen, I submit to you it make makes no sense. It's not a
11 credible version of events.

12 With respect to the money. Mr. Brill made this
13 point that there wasn't a lot of evidence that Vitaly
14 Korchevsky was receiving his 12 percent.

15 Now, ladies and gentlemen, all the payments that
16 Vitaly Korchevsky from the Dubovoys are in evidence. You can
17 look at them, and you should, if you like, but I'm not going
18 to stand up here and suggest to you he received 12 percent of
19 the Dubovoy's profits in this illicit scheme. And you know
20 exactly why.

21 He wasn't bothering the Dubovoys for 12 percent,
22 ladies and gentlemen. He was making far more than the
23 Dubovoys. The reason he offered up \$500,000 late in scheme,
24 that skin-in-the-game payment, the reason that he was texting
25 Igor Dubovoy again and again and again, question mark,

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1 question mark, question mark, was because he was making an
2 enormous amount of money trading on the stolen information in
3 his own accounts. Why would you possibly nag Arkadiy Dubovoy
4 over a measly 12 percent, when in the space of three months
5 you made \$1.385 million to Dubovoy's \$247,000. It makes no
6 sense.

7 Vitaly Korchevsky wanted this to keep going. He
8 wasn't going to nag Arkadiy Dubovoy about it. He probably
9 wasn't perceptive enough to know that Arkadiy Dubovoy was
10 losing interest in the scheme. 12 percent does not put fuel
11 into Vitaly Korchevsky, ladies and gentlemen, it was the
12 100 percent that he was able to collect and keep, which
13 allowed him to just trade more. That's an important point,
14 ladies and gentlemen, you have the course of his trading
15 activity as he makes more money. He's able to bet more and
16 more. Ladies and gentlemen, he had more money. He doesn't
17 have to work as much either.

18 Now, 2014 is an important period to think about.
19 It's an important period both with respect to Mr. Khalupsky
20 and Mr. Korchevsky.

21 Now just to circle back just for a moment on the at
22 the Alex Ledovskiy point. Ms. Whalen spent some time talking
23 about how they made the evidence that the Dubovoy's set
24 Ledovskiy up in his own trading account in 2014. Maybe that's
25 true, maybe that isn't. I submit it doesn't make a whole lot

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1 of difference. Everybody agrees that in 2014 there no access
2 to the press releases for members of this conspiracy. That's
3 why Vitaly Korchevsky's performance in 2014 is so much worse
4 than the preceding three years.

5 I want to talk about, just briefly, Dr. Canjels'
6 testimony. There was some important points of Dr. Canjels'
7 testimony, and then you heard the testimony from the defense
8 expert, Mr. Mayer; the 650,000-dollar and then some, a
9 substantial amount more, expert that testified yesterday. And
10 Mr. Brill, again, I'm certain he's doing the best he can, as I
11 am, it's a complicated case. He told you that the expert
12 testimony from Mr. Mayer suggested that Vitaly Korchevsky's
13 trading techniques, his strategy, was the same in 2009 and
14 2010 as it was in 2011 through 2013. So I'm going to ask
15 Mr. Gopstein to show what's in evidence as page 15 of the
16 Government Exhibit 8003, and this is one page from
17 Dr. Canjels' testimony.

18 Ladies and gentlemen, this is in evidence. You
19 should take time to look at these numbers. These numbers do
20 not support the notion that Vitaly Korchevsky was primarily an
21 earnings trader in 2009 and 2010. He certainly wasn't doing
22 short, three-day round trip trades with the same frequency in
23 those early years as he was later on. Look at those numbers.
24 Look at his success rate.

25 Ladies and gentlemen, I submit to you, the evidence

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1 is very powerful that Vitaly Korchevsky experienced a radical
2 change in strategy in 2011. And you know exactly why he did.
3 Because that's when he got access to the stolen press
4 releases. That's why he performed better and that's why he
5 traded differently. This evidence is important. You have to
6 be careful. That is in evidence. That's what proof shows.

7 Another really important point, I don't need
8 Mr. Gopstein for this one. I submit to you, ladies and
9 gentlemen, this is the most important slide with respect to
10 Korchevsky and the Canjels' presentation. This is page 17 for
11 the record.

12 Ladies and gentlemen, there is no innocent
13 explanation for this trading pattern. There is no reason why
14 an earnings trader would trade almost exclusively in companies
15 that issued their press releases through PRN and then stop
16 cold and all of a sudden trade only in companies who issued
17 their press releases through Marketwire. And then stop cold
18 and then only trade in companies who issued their press
19 releases through Business Wire.

20 And, ladies and gentlemen, that's what this chart
21 shows you almost exclusively. He was a PRN guy, then he was a
22 Marketwire guy, then he was a Business Wire guy.

23 Ladies and gentlemen, this slide is evidence of when
24 the hackers had access to press releases in particular
25 newswire companies and when Korchevsky was getting access to

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1 them.

2 And you saw this same pattern in the accounts, the
3 TDA account and the Merrill Lynch account. Zografakis
4 trading. There is no innocent explanation. There's no reason
5 why a trader would care who's issuing press releases; whether
6 it's Business Wire or Marketwire or PRN, unless they have
7 access prior to distribution to those press releases.

8 Mr. Gopstein, I want to show the jury briefly what's
9 in evidence at 8003, page 24. This is that ENT trade.

10 Ladies and gentlemen, this is the important point.
11 And I'm confident you got it. Vitaly Korchevsky puts himself
12 before everybody else. You know he's doing that during Rupion
13 Period, too, when he trades, oftentimes -- he trades 97 times.
14 Dubovoy trades 67 times.

15 When push comes to shove, when he gets access to a
16 stolen press release close in timing, he trades and the
17 Dubovoys don't. He puts himself first.

18 And, ladies and gentlemen, another point, Mr. Brill
19 noted that this didn't necessarily make sense because there
20 was an opportunity to make more money if he invested more in
21 those options, right? But you know exactly why that is not an
22 innocent explanation for this trading pattern.

23 First, you heard the defense's own expert explain
24 that options trading, it draws attention. And the second
25 point, ladies and gentlemen, and this is in evidence, on that

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1 particular day, Vitaly Korchevsky had entered into a number of
2 trades, all inside the window, five trades to be specific,
3 four of them prior to this.

4 The reason he didn't have money to make a bigger
5 bet, I submit to you, one, is because he's mindful of being
6 detected; two, remember options trading is a new thing for him
7 anyway; but three, it was late in the day. He had already
8 taken his positions for the next day, based on the other press
9 releases he received. He's stuck with what the hackers give
10 him. That's why he made this trade close in time, and that's
11 why he made it not as big. He didn't have as much money to
12 make that trade, because he had already staked out his
13 position that day.

14 One other point with respect to Mr. Mayer and
15 Dr. Canjels. This is in evidence as Government Exhibit 810.
16 Mr. Brill made a point that the government reacted to
17 testimony that Mr. Mayer sort of offered up on
18 cross-examination, maybe a little bit of a bulliness, this
19 idea that there was, in fact, some kind of statistical
20 correlation. I think the testimony was some kind of
21 relationship between the upload time and first order time for
22 Vitaly Korchevsky in 2009 and 2010.

23 Ladies and gentlemen, that was wrong. And you know
24 that in part because when Mr. Gopstein asked Mr. Mayer to
25 explain what the P-value was, Mr. Mayer said he hadn't

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1 actually done the analysis himself, he didn't bother to look
2 up that P-value.

3 So the reason the government reopened our case is
4 because we do the best we can to put accurate information
5 before the jury. And it's simply not correct as a matter of
6 statistics and a matter of accuracy and fact that there was a
7 statistical relationship between upload time and first order
8 time during this period.

9 That's what that tells you. That P-value tells you
10 there is no statistically significant correlation. And that's
11 important. Because it tells you that during this period when
12 other evidence shows you that Vitaly Korchevsky had access to
13 stolen press releases, there was such a correlation.

14 Ladies and gentlemen, the evidence in this case is
15 very -- it's massive. It's a big case. And when go back to
16 the jury room, all the parties, the government and the
17 defense, are asking you to consider the evidence in this case;
18 not the oral arguments, not the questions to which there was
19 no answer. Just consider the evidence, the documents and the
20 testimony. And you consider them all together.

21 When you think about the cooperator's testimony, you
22 think about it in connection with the other documents that are
23 in evidence in this case. And you also think about was their
24 testimony too good to be true.

25 And Ms. Whalen made some points. There was an

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1 interesting tension, I submit to you, between the defense
2 argument for Mr. Korchevsky and the defense argument for
3 Mr. Khalupsky.

4 Mr. Korchevsky got up and said, we didn't even
5 mention the cooperators during the government's summation, we
6 completely abandoned them. And then Ms. Whalen got up and
7 said, we're all about the cooperators, you have to reject the
8 case because of the cooperators.

9 I respectfully submit to you neither of those is
10 correct. The government's position is the cooperators are
11 another category of evidence that you should consider, and you
12 should consider the other evidence in this case, and you
13 should consider whether Igor Dubovoy's testimony was too good
14 to be true against the defendants.

15 Ms. Whalen highlighted those few points about Igor
16 Dubovoy and his testimony regarding Mr. Khalupsky. It was
17 really limited. Sort of the attack on Igor Dubovoy. It's
18 interesting because Ms. Whalen on many points was embracing
19 his testimony because, frankly, it was helpful to her.

20 Igor Dubovoy did not testify that he was present for
21 any discussion between Vladislav Khalupsky and anybody about
22 the stolen or hacked press releases.

23 The testimony is our piece of the puzzle, ladies and
24 gentlemen. We've attempted to connect it all together. I
25 encourage you, and I know you will, to consider everything,

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1 and to consider whether the testimony on its own, in
2 connection with everything else, deserves your rendering a
3 verdict.

4 Again, I submit to you the evidence in this case
5 proves the defendants guilt. It proves that there was a
6 conspiracy of hackers in the Ukraine through the use of
7 deceptive techniques to gain access to newswire computer
8 systems and to steal those press releases. The conspiracy
9 involved Arkadiy Dubovoy, and Pavel Dubovoy, and Igor Dubovoy.
10 They provided much of the money in this scheme, and the
11 connected this hacked information to the traders, the
12 defendants in this case, Vitaly Korchevsky and Vladislav
13 Khalupsky.

14 When you consider all this evidence, I encourage you
15 to use your common sense, think about all the different
16 categories; about the emails, the forensics, the trading
17 activity and the testimony.

18 Ladies and gentlemen, we ask you to hold these
19 defendants accountable for their criminality. Find them
20 guilty, not because I say they're guilty, or Ms. Nestor, or
21 Mr. Gopstein do, but because the evidence has shown their
22 guilt. Because this trial has led you to the one inevitable
23 conclusion that these defendants committed the crimes of which
24 they're charged. Because the government has met its burden
25 and proved their guilt beyond a reasonable doubt. Find them

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1 guilty, ladies and gentlemen, guilty as charged.

2 Thank you very much for your attention.

3 THE COURT: All right, thank you all, counsel.

4 Ladies and gentlemen, that means the trial is
5 completely. I will instruct you on the law at 9 a.m.,
6 Thursday morning.

7 In the meantime, have a pleasant holiday, a break
8 from the trial, but, again, perhaps now more than ever, no
9 discussion about the case. Be vigilant about any news
10 accounts. No discussions with anyone about the case,
11 including your fellow jurors.

12 Have a lovely holiday and we'll see you Thursday
13 morning. Good night.

14 THE COURTROOM DEPUTY: All rise.

15 (Jury exits the courtroom.)

16 THE COURT: All right, you'll supply me with the
17 theory of your defense --

18 MS. BRILL: Yes.

19 THE COURT: -- requesting an instruction. We will
20 plug that into our evolving charge and get it out to you
21 sometime tomorrow morning.

22 If you have any reservations, or comments, or
23 complaints of any sort, let us know by return email to my law
24 clerk. Otherwise, I'll see you Thursday morning.

25 MR. HEALY: Your Honor, I thought you wanted to

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1 address the situation with Jury number Eight before the
2 deliberations began.

3 THE COURT: Well, we're going to have to address it.
4 The jury will have the case before lunch Thursday. The only
5 time we have with him is Thursday and Friday. He had sat here
6 throughout the whole trial, but I'm open to your collective,
7 individual suggestions.

8 MR. HEALY: Your Honor, one thought with respect to
9 that jury is that if he knows he's leaving on Sunday and will
10 be out the following week, then it gives him sort of the
11 incentive, in the negative sense, to come up with a verdict
12 prematurely in order for him to be able to take off on his
13 vacation and not have the need to come back. And I think that
14 would be unfair for him to sit and have that pressure to do
15 that, especially when we have six alternates.

16 THE COURT: Well there's no pressure. In fact, I'm
17 going to tell him specifically -- if we keep him, I'm going to
18 tell him specifically that I made a commitment to him that
19 he's going to leave on Sunday. So if they don't have a
20 verdict Thursday or Friday, we are going to have to seat
21 another juror and begin the deliberations anew.

22 What is the government's view on that?

23 MR. TUCKER: I think that's a fine instruction, and
24 the government's view is he sat here the entire time, he
25 should have an opportunity to deliberate. And given the

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1 length of the case, focusing more on trial days, I think we
2 have nine trial days, I don't think a day and a half is an
3 insignificant time at all for deliberations. I think that's a
4 substantial chunk and he should have a chance to deliberate.

5 THE COURT: All right, I'll give it some more
6 thought. We're finishing a little earlier than I thought. I
7 thought this would be more or less foreclosed, but I'll give
8 it some thought and we'll talk about it again on Thursday,
9 Thursday morning. We'll have to make a decision Thursday
10 before we turn it over to the jury.

11 And with that...

12 MR. TUCKER: Thank you, Your Honor.

13 THE COURT: Well done. Get some rest. Enjoy your
14 holiday as best you can, and we'll see you Thursday morning.

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16 (Proceedings adjourned at 5:00 p.m. to resume on
17 July 5, 2018 at 9:00 a.m.)

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